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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1928 19

No. 632

THE FARMERS LOAN AND TRUST COMPANY, AS SOLE SURVIVING EXECUTOR OF THE LAST WILL AND TESTAMENT OF HENRY R. TAYLOR, DECEASED, APPELLANT,

vs.

THE STATE OF MINNESOTA

No. 633 26

THE FARMERS LOAN AND TRUST COMPANY, AS SOLE SURVIVING EXECUTOR OF THE LAST WILL AND TESTAMENT OF HENRY R. TAYLOR, DECEASED, APPELLANT,

vs.

THE STATE OF MINNESOTA

APPEALS FROM THE SUPREME COURT OF THE STATE OF MINNESOTA

FILED JANUARY 18, 1929

(33,941,)(33,942)

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vs.

~~THE STATE OF MINNESOTA~~

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vs.

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APPEALS FROM THE SUPREME COURT OF THE STATE OF MINNESOTA

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IN DISTRICT COURT OF RAMSEY COUNTY

In the Matter of the Inheritance Tax on the Estate of HENRY R. TAYLOR, Deceased

APPLICATION FOR DETERMINATION OF TAX

To the Attorney General of the State of Minnesota:

The Farmers' Loan and Trust Company, as one of the Executors of the will of the above named decedent, hereby makes application for the determination by you of the amount of inheritance tax, if any, due to the State of Minnesota on account of the transfer of the property owned by the above named decedent at the time of his death and for the issuance of the proper consents to transfer in case no tax is due, and for that purpose submits the following affidavit and evidence.

Dated at New York City, this 23rd day of July, 1926.

(Signed) The Farmers' Loan and Trust Company,
by William B. Cardozo.

Affidavit of William B. Cardozo, Vice President of Farmers' Loan and Trust Company, one of the executors, is attached to application.

I, Henry R. Taylor, of the Borough of Manhattan, City of New York, do make, publish and declare the following as [fol. 2] my last will and testament, having made no prior will.

First. I direct the payment of my just debts, funeral expenses and testamentary charges by my executors as soon as practicable after my death.

Second. I give and bequeath all my personal effects, wardrobe, jewelry, books, silver, pictures, carriages, automobiles, porcelain and effects of every nature and description of personal use, to my brother, Moses Taylor, if he survive me, but if he do not survive me, then I give and bequeath such property to his children, Reginald B. Taylor, Frank Taylor, Marion Taylor and Edith Taylor, or

those of them who may survive me, to be divided among them as nearly equally as practicable. All questions whether any specific articles shall be included in this bequest shall be conclusively determined by my executors.

Third. I give and bequeath the sum of two hundred and fifty thousand dollars ($250,000) to my stepmother, Josephine W. Taylor.

I also give and bequeath the following legacies to the following charitable corporations:

The sum of five hundred thousand dollars ($500,000) to The Society of the New York Hospital, for use at its Bloomingdale Hospital, in White Plains, New York;

The sum of five hundred thousand dollars ($500,000) to Manhattan Maternity and Dispensary;

The sum of five hundred thousand dollars ($500,000) to Loomis Sanatorium;

[fol. 3] The sum of one hundred thousand dollars ($100,000) to New York Eye and Ear Infirmary.

Fourth. In case my brother, Moses Taylor, survive me, I give, devise and bequeath to him all my interest or share in the premises known as Number 3 East Seventy-first Street, in the Borough of Manhattan, City of New York. If he predecease me, such property shall constitute part of my residuary estate.

Fifth. I direct that all inheritance, estate, transfer or succession taxes on the foregoing legacies, devises and bequests be paid out of the capital of my residuary estate.

Sixth. All the rest, residue and remainder of my estate, wheresoever situate and of whatever nature, I direct my executors hereinafter named to divide into equal parts or shares, so that there shall be one equal share for a separate trust for each child living at my death of my brother, Moses Taylor, and of my sister, Harriet Della Gherardesca, by her husband Giuseppe Della Gherardesca, per capita, and one equal share collectively for the issue living at my death of each of said children of my brother or sister who may die before me leaving issue; and I direct my executors to subdivide each share for such issue collectively of such deceased children of my brother and sister into separate or individual shares for each of such issue, per stirpes

and not per capita. I give, devise and bequeath to my trustees, hereinafter named, each separate share directed to be divided and set apart by this my will for the children of [fol. 4] my said brother and said children of my sister living at my death, or such issue of deceased children living at my death, in trust, to invest and reinvest, collect the income thereof, and pay over the net income quarterly to the beneficiary, the child of my brother or sister, or other issue of theirs as aforesaid, for whom such fund is held, free from all debts or engagements of the beneficiary or control of the husband or wife of such beneficiary during the term of the natural life of such beneficiary; and on his or her death the said fund shall be distributed by the trustees in such manner, in such shares and proportions and subject to such terms and provisions as the beneficiary so dying may by last will and testament or instrument in the nature thereof direct and appoint; and in the event of failure to exercise such power of appointment, then to those persons who would be entitled to the same if such beneficiary had died the owner of such share intestate and a resident of the State of New York, and in like shares and proportions.

Seventh. I hereby nominate, constitute and appoint my brother, Moses Taylor, and The Farmers' Loan and Trust Company, a corporation doing business as a trust company in the City of New York as the executors of this my last will and testament, and as trustees of the trusts hereby created, and hereby expressly provide that neither of such executors or trustees be required to give any bond or other security, or surety on bond, for the faithful performance of his or its duties as such executor or trustee in this State [fol. 5] or in any other State or jurisdiction in which they or either of them may act.

Eighth. In case any of the beneficiaries of the trusts hereunder be under the age of twenty-one years at the time of my death, I authorize my trustees, in their discretion, during such minority, to accumulate the income, in whole or in part, for the benefit of such beneficiary who is a minor.

Ninth. Any and all securities and property owned by me at my death may be retained by my executors and trustees

and allotted to any of the trusts or shares hereinbefore provided for, at such valuations as my executors or trustees may deem proper, and the decision of my executors and trustees as to the fair value of such securities and property shall be conclusive upon all persons deriving any interest therefrom under this my will.

My executors and trustees are authorized to divide and make partition of my real estate among those entitled thereto under my will, or as between my estate and other tenants in common.

I authorize my executors and trustees to sell or mortgage any real estate belonging to my estate, whether for the purpose of the division of my estate at any time, or during the term of any trust for the purpose of changing investments, or for any purpose to promote the interests of my estate; and also to lease any such real estate for any period without application to the court for its approval; to make investments in such real estate by improving the same by the erection of buildings or other improve-[fol. 6] ments or replacement of buildings or other improvements; and to release any real estate from the lien of any mortgage either upon payment of a portion of the debt secured by such mortgage or without such payment.

I authorize my executors and trustees to sell any personalty of my estate and the trusts and to invest and reinvest the funds of my estate or of the trusts hereunder in any real estate, securities or stock which they may deem judicious, whether or not such investments be of the character prescribed by law for trust investments; and to change investments of any trust hereunder.

I expressly absolve my executors and trustees from any duty to create a sinking fund out of income to make good to capital any premium which may be paid in the purchase of any investments of my estate.

Any stock dividends declared on securities which may be held in my estate or any of the trusts hereunder shall be treated as principal and not income.

I authorize my executors and trustees to participate in the re-organization of any corporation, securities in which may be held by my estate or trusts thereunder, and take such action in regard thereto as they may be advised.

With respect to any trusts subsisting under this my will, my trustees may account during the trust term by submit-

ting an account of their proceedings to the beneficiary for life, if of full age, and the account shall be deemed settled and adjusted, upon receipt by the trustee or trustees from [fol. 7] the beneficiary of an instrument in writing approving of such account and commissions of the trustees, to the same extent and with the same effect as if such account had been judicially settled and allowed, and such commissions awarded, by a court of competent jurisdiction by judgment or decree binding upon all persons interested in such trust under my will or by operation of law.

In Witness Whereof I have hereunto set my hand and seal this 27th day of June, nineteen hundred and twenty-two.

Henry R. Taylor. (Seal.)

Signed, sealed, published and declared by Henry R. Taylor, the above-named testator, as and for his last will and testament, in the presence of us, who, at his request, in his presence and the presence of one another, have hereto set our names as attesting witnesses, the day and year last above written.

Laurence Millet, Oyster Bay, N. Y. John F. Charlton, 34 Plaza St., Brooklyn, N. Y. Francis Smyth, No. 121 East 71st St., N. Y. City.

[fol. 8] In District Court of Ramsey County

Findings and Determination

Upon due application made to the undersigned by Farmers Loan & Trust Company as representative of the estate of the above named decedent, and from the affidavit of said representative it appears that the decedent died on Dec. 4, 1925, a resident of the state of New York and that the only property of the decedent within the jurisdiction of the State of Minnesota was as follows:

$2,000, face value, City of Minneapolis 4½% Bonds, due May 1, 1926, and interest of the value of	$2,009.65
$6,000 face value City of Minneapolis 4½% Bonds, due May 1, 1927 and interest of the value of	6,048.75

$6,000, face value, City of Minneapolis 4½% Bonds, due May 1, 1928 and interest of the value of 6,066.15

$6,000 face value, City of Minneapolis, 4½% Bonds, due May 1, 1929, and interest of the value of 6,072.15

$6,000 face value, City of Minneapolis 4½% Bonds, due May 1, 1930 and interest of the value of 6,079.95

$6,000, face value, City of Minneapolis 4½% Bonds, due May 1, 1931, and interest of the value of 6,062.35

$6,000, face value, City of Minneapolis 4½% Bonds, due May 1, 1932, and interest of the value of 6,066.15

$6,000, face value, City of Minneapolis 4½% Bonds, due May 1, 1933, and interest, of the value of 6,079.35

$6,000, face value, City of Minneapolis 4½% Bonds, due May 1, 1934, and interest of the value of 6,092.55

$25,000, face value City of Minneapolis 4% Bonds, due November 1, 1939, and interest of the value of 24,254.17

[fol. 9] $50,000, face value City of St. Paul School 4½% Bonds, due January 1, 1954, and interest of the value of 52,366.25

$15,000, face value, City of Minneapolis, 4½% Bonds, due September 1, 1942 and interest of the value of 15,519.38

$35,000, face value, City of Minneapolis, 4½% Bonds, due September 1, 1943, and interest of the value of 36,260.87

$25,000, face value, City of St. Paul 4½% Bonds, due November 1, 1952, and interest of the value of 25,790.62

$50,000, face value, State of Minnesota Rural Credit, 4½% Bonds, due June 1, 1954 and interest of the value of 51,873.75

$25,000, face value, State of Minnesota 5% Bonds, due August 1, 1926, and interest of the value of 25,557.08

$10,000, face value, State of Minnesota 5% Bonds, due August 1, 1927, and interest of the value of	10,303.83
$50,000, face value, State of Minnesota 5% Bonds, due August 1, 1928, and interest of the value of	51,884.16
Five Hundred Twenty Eight Shares (528) of Capital stock of the Minneapolis, St. Paul & Sault Ste. Marie Railway Company as evidenced by Certificate No. — of the value of	10,824.00
Total Value	$355,211.16

Now, Therefore, on such application, representation and evidence, I Find And Determine that said property, at the time of the death of the decedent, was of the above stated value, and that under and pursuant to the terms and conditions of decedent's last will and testament the following named legatees and devisees will receive a legacy or devise payable out of said Minnesota property of the taxable value, and producing the inheritance tax due Minnesota as described below, namely:

[fol. 10]

Legatee		Amount inherited	In excess of exemption	Tax
Josephine W. Taylor	Stranger	$3,917.14	$3,817.14	$190.86
The Society of the New York Hospital		7,834.27	7,734.27	386.71
Manhattan Maternity & Dispensary		7,834.27	7,734.27	386.71
Loomis Sanatorium		7,834.27	7,734.27	386.71
New York Eye & Ear Infirmary		1,566.85	1,466.85	73.34
Reginald B. Taylor	Nephew	34,330.60	33,330.60	1,644.80
Trustees for 3% Class		9,472.37	8,472.37	254.17
Francis Taylor	Nephew	34,734.90	33,734.90	1,675.12
Trustees for 3% Class		9,068.07	8,068.07	242.04
Marion Taylor Gibson	Niece	35,103.41	34,103.41	1,702.76
Trustees for 3% Class		8,699.56	7,699.56	230.99
Edith Taylor Huntington	Niece	35,275.29	34,275.29	1,715.65
Trustees for 3% Class		8,527.67	7,527.67	225.83
Charlotte Della Gherardesca	Niece	35,439.55	34,439.55	1,727.97
Trustees for 3% Class		8,363.42	7,362.42	220.87
Clarice Della Gherardesca	Niece	36,155.69	35,155.69	1,781.68
Trustees for 3% Class		7,647.27	6,647.27	199.42
		$291,804.60	$279,304.60	
Total Tax				$13,045.63

[fol. 11] I further Find that the State of Minnesota is entitled to have and receive from the estate of said decedent, and the legatees and beneficiaries above named, the total tax of Thirteen Thousand Forty Five Dollars and Sixty Three Cents ($13,045.63) as an inheritance tax upon said Minnesota property so transferred to said legatees; which said tax bears interest at the rate of seven per cent. per annum from one year after said decease if not previously paid.

I Further Find And Determine that no other person or corporation receives any share of said property as a legacy or inheritance exceeding in value the amount which is exempt from an inheritance tax.

In Witness Whereof, I have hereunto subscribed my name and affixed by official seal, at the City of St. Paul, State of Minnesota, this 27th day of August, 1926.

Albert F. Pratt, Assistant Attorney General in Charge of Inheritance Tax Matters. (Seal.)

[fol. 12] In District Court of Ramsey County

Notice of Appeal

You will please take notice that the executors of the estate of Henry R. Taylor, deceased, being aggrieved by the findings and determination made in the above entitled matter on the 27th day of August, 1926, hereby object thereto upon the following grounds:

1. That the bonds listed and described in said findings and determination were and are bonds of cities of the State of Minnesota and of the State of Minnesota and were and are bearer bonds and were at the time of the death of said decedent physically without the State of Minnesota and without its taxable jurisdiction and said bonds and their transfer were not and are not subject to the inheritance tax law of the State of Minnesota. That said bonds were bequeathed and transferred under and by the terms of said decedent's will by virtue of and pursuant to the laws of New York wherein said decedent had his domicile and residence at the date of his death.

2. That said findings and determination and the action of the State of Minnesota in attempting to impose an inheritance tax upon the transfer of said bonds or any of [fol. 13] them are in violation of the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States and are in contravention of the due process clause of said amendment.

3. That said findings and determination and the said action of the State of Minnesota impairs the obligation of contracts in violation of Section 10 of Article I of the Constitution of the United States and of Section 11 of Article 1 of the Constitution of Minnesota.

4. That in said findings and determination it was erroneously found and determined that there was due as an inheritance tax upon the transfer of or succession to the property listed therein the sum of Thirteen Thousand Forty Five Dollars and Sixty Three Cents ($13,045.63).

You Will Further Please Take Notice that said executors hereby appeal to the District Court of Ramsey County, Minnesota, from said findings and determination and from each and every part thereof and respectfully pray that said District Court set aside said findings and determination and the taxes assessed thereunder and that said Court direct and require such correction, amendment or modification as [fol. 14] may be consistent with the facts in the premises.

Moses Taylor, The Farmers' Loan and Trust Company, Executors of the Estate of Henry R. Taylor, by Davis, Severance & Morgan, 1512 Merchants National Bank Bldg., St. Paul, Minnesota. Cadwalader, Wickersham & Taft, New York City, Attorneys for said Executors.

To Hon. Clifford L. Hilton, Attorney General of the State of Minnesota; Hon. Albert F. Pratt, Assistant Attorney General of Minnesota in Charge of Inheritance Tax Matters.

Dated September 14, 1926.

[fol. 15] IN DISTRICT COURT OF RAMSEY COUNTY

Settled Case

On Appeal from Findings and Determination of the Attorney General

STIPULATION AS TO FACTS

The parties in the above entitled matter hereby stipulate the following facts, subject to the objection by either party as to materiality or relevancy:

1. The above named Henry R. Taylor (hereinafter called "decedent") died a resident of the state of New York on December 4, 1925, leaving a last will and testament which has been duly proved and allowed as such in the surrogates court of the county of New York and state of New York. Letters testamentary on said will were duly issued by said court to Moses Taylor of Portsmouth, Rhode Island, and to the Farmers Loan and Trust Company, a corporation organized and existing under the laws of the state of New York, and which maintains its principal office in New York City, New York.

2. For a long time prior to and at the date of the death of said decedent, he owned, held and kept in New York, the state of his residence and domicile, the following Minnesota state certificates of indebtedness and Minnesota state and city bonds:

[fol. 16]

Face value	Description	Value on Dec. 4, 1925	Accrued interest Dec. 4, 1925	Total
	Group A			
$2,000	City of Minneapolis.....	$2,001.40	$8.25	
6,000	" " "	6,024.00	24.75	
6,000	" " "	6,041.40	24.75	
6,000	" " "	6,047.40	24.75	
6,000	" " "	6,055.20	24.75	
6,000	" " "	6,027.60	24.75	
6,000	" " "	6,041.40	24.75	
6,000	" " "	6,054.60	24.75	
6,000	" " "	6,067.80	24.75	
	Group B			
25,000	City of Minneapolis.....	24,162.50	91.67	
	Group C			
50,000	City of St. Paul.....	51,410.00	956.25	

Face value	Description	Value on Dec. 4, 1925	Accrued interest Dec. 4, 1925	Total
	Group D			
15,000	City of Minneapolis.....	15,345.00	174.38	
	Group E			
35,000	City of Minneapolis.....	35,854.00	406.87	
	Group F			
25,000	City of St. Paul.....	25,687.50	103.12	
	Group G			
50,000	State of Minnesota.....	51,855.00	18.75	
	Group H			
25,000	State of Minnesota.....	25,130.00	427.08	
10,000	" " "	10,133.00	170.83	
50,000	" " "	51,030.00	854.16	
$335,000		$340,967.80	$3,409.36	$344,377.16

[fol. 17] The above described bonds and certificates of indebtedness are the same bonds and certificates of indebtedness as those set forth in the findings and determination of the attorney general of Minnesota in this proceeding.

At no time since said bonds and certificates of indebtedness have been owned by said decedent have they or any of them been held or kept in the state of Minnesota.

Attached hereto and made a part of this stipulation are the following exhibits:

Exhibit A, being a true copy of one of the bonds of the city of Minneapolis included in Group A of the foregoing list of bonds and certificates of indebtedness and identical with all the bonds in said Group A except as to serial number and date of maturity.

Exhibit B, being a true copy of the bonds of the city of Minneapolis constituting Group B of the foregoing list of bonds and certificates of indebtedness.

Exhibit C, being a true copy of the bond of the city of St. Paul constituting Group C of the foregoing list of bonds and certificates of indebtedness.

Exhibit D, being a true copy of one of the bonds of the city of Minneapolis included in Group D of the foregoing list of bonds and certificates of indebtedness and identical with all the bonds in said Group D except as to serial number.

Exhibit E, being a true copy of one of the bonds of the city of Minneapolis included in Group E of the foregoing list of bonds and certificates of indebtedness and identical [fol. 18] with all the bonds in said Group E, except as to serial number and except that one of said bonds is a sewer bond instead of a school bond.

Exhibit F, being a true copy of one of the bonds of the city of St. Paul included in Group F of the foregoing list of bonds and certificates of indebtedness and identical with all the bonds in said Group F except as to serial number.

Exhibit G, being a true copy of one of the bonds of the state of Minnesota included in Group G of the foregoing list of bonds and certificates of indebtedness and identical with all the bonds in said Group G except as to serial number.

Exhibit H, being a true copy of one of the certificates of indebtedness of the state of Minnesota included in Group H of the foregoing list of bonds and certificates of indebtedness and identical with all the certificates of indebtedness in said Group H except as to serial number and date of maturity.

3. The State of Minnesota, the city of St. Paul and the city of Minneapolis each maintained prior to and on December 4, 1925, a financial or fiscal agency in the city of New York, state of New York, as referred to in the several bonds and certificates hereinbefore described.

4. The attorney general of Minnesota, in determining the amount and value of that portion of said decedent's property passing to the several residuary legatees named in said will, upon the transfer of which said attorney gen- [fol. 19] eral asserts that the state of Minnesota imposes an inheritance tax as set forth in his findings and determination, has not deducted or made any allowance for or in any wise allocated to such property any part of the following items:

(a) The money paid or to be paid to the state of decedent's domicile at his death, viz: the state of New York, as a tax upon the transfer of said decedent's property upon his death, which property included all the property upon the transfer of which the attorney general in this proceeding has determined a tax to be due to the state of Minne-

sota; the amount of said New York transfer taxes is at present undetermined but was estimated to be $2,879,386.80 by the said Farmers Loan and Trust Company, one of the executors of said decedent's will, in its application to the attorney general of Minnesota for a determination of the Minnesota inheritance taxes.

(b) The money paid or to be paid to various states (other than the states of New York and Minnesota) as inheritance taxes upon the transfer of such of decedent's property as had a situs in said states or the transfer of which was within their jurisdiction; the amount of said inheritance taxes was estimated to be $100,000.00 by said executor in the application referred to above, but since the filing of said application said taxes have been assessed by [fol. 20] said various states in the following amounts:

Kansas	$342.25
Illinois	292.46
Ohio	17,475.91
Michigan	7,954.86
Wisconsin	7,824.06
Virginia	3,237.25
New Jersey	34,296.36
New Hampshire	408.33
Maine	150.00
Rhode Island	455.43
North Dakota	303.21
	$72,740.12

All of said taxes so assessed have been paid in said several amounts except the taxes assessed by the state of Ohio.

(c) The money to be paid as trustees' commissions for the carrying out of the trusts established by said decedent's will; the amount of said trustees' commissions is at present undetermined, but was estimated to be $600,219.06 by said executor in the application referred to above.

5. A full, true and correct copy of the last will of said decedent as on file herein is made a part hereof.

6. If and whenever in this proceeding it shall become material for the court to determine the law of the state of New York or of any other state, the court may consider as evidence of such law any printed copies of the statute [fol. 21] laws of such states and any books of reports of cases adjudged in the courts of such states in the same manner as though said printed copies of the statute laws and said books of reports of cases were introduced and admitted in evidence in this proceeding.

Dated this 8th day of July, 1927.

Clifford L. Hilton, Attorney General of the State of Minnesota; Albert F. Pratt, Assistant Attorney General in Charge of Inheritance Tax Matters, Attorneys for the State of Minnesota. Cadwalader, Wickersham & Taft, Davis, Severance & Morgan, Attorneys for Appellants, the Executors of the Last Will and Testament of Henry R. Taylor.

[fol. 22] EXHIBIT "A"

State of Minnesota

No. 1015. $1,000.00.

City of Minneapolis

Street Improvement Bond

Special Street Acquisition and Improvement No. 59

The City of Minneapolis, in the County of Hennepin, State of Minnesota, for value received hereby certifies that it is indebted and hereby promises to pay to bearer the sum of one thousand dollars ($1,000.00) on the First Day of May, A. D. 1928, with interest thereon at the rate of Four and One-Half Per Centum per annum, payable semi-annually on the First Days of May and November of each year on the presentation and surrender of the respective coupons hereto attached as they severally become due, both principal and interest being payable in gold coin of the United States of America of the present standard of weight and fineness at the fiscal agency of said City, in the City of New York, N. Y., or at the Treasurer's office in the City of Minneapolis, at the option of the holder hereof.

This bond is one of a series aggregating One Hundred Twenty-one Thousand Six Hundred Twenty and 50-100 Dollars ($121,620.50), par value, maturing at various annual dates from May 1, 1915, to May 1, 1934, issued for the purpose of realizing funds for acquiring lands and making improvements in the matter of acquiring lands for [fol. 23] laying out, widening and opening Ninth Street, North, from Hennepin Avenue to First Avenue, North, in the City of Minneapolis, and improving the same, the same being Special Street Acquisition and Improvement No. 59, sixty-six and two-thirds per cent of the above aggregate sum being assessed for benefits against property benefited by said improvements under the provisions of Chapter 185 of the General Laws of Minnesota, 1911, as amended by Chapter 345 of the General Laws of Minnesota, 1913, under the provisions of which this bond is issued, and the whole fund to be derived from the said assessments for benefits, including interest and penalties, is pledged for the payment of the said series of bonds, and the interest thereon as they severally become due in the form and manner authorized by law, and the said City of Minneapolis hereby binds itself to collect and apply the said assessments in the payment of the said series of bonds, including this bond, and to make good from the general funds any deficiencies in the collection of such assessments up to but not exceeding the principal and interest of this bond as provided in the laws aforesaid, and further binds itself in addition to said assessments and guaranty, to levy, assess and collect in the same manner as other taxes of said City are levied, assessed and collected, from year to year while said bonds or any of them are outstanding and unpaid, a sufficient tax on all the taxable property of said City to pay thirty-three [fol. 24] and one-third per cent of the aggregate amount of the said issue with interest.

It is hereby certified, recited and declared that all acts, conditions and things, required to exist, happen and be performed precedent to and in the issuance of this bond, have existed, happened and been performed in regular and due time, form and manner as required by law, and that this bond and the issue of which it is a part, are within every debt and other limit prescribed by the Constitution and Laws of the State of Minnesota. The full faith and

credit of the City of Minneapolis are hereby pledged for the punctual payment of this bond according to its tenor.

This bond may be registered, the registry to be certified hereon by the City Comptroller, and is subject to successive registrations or transfers at the option of the holder. The coupons may be separated from this bond and surrendered to the City Comptroller for cancellation, in which case the interest will be paid to the registered holder or order.

In testimony whereof, the said City of Minneapolis, acting by and through its City Council, has caused this Street Improvement Bond to be signed by the Mayor of said City, countersigned by the City Comptroller and attested by the City Clerk thereof and the corporate seal of the said City to be hereto affixed, and the coupons hereto attached to be executed with the fac-simile signatures of said Mayor, City [fol. 25] Clerk and City Comptroller, and this bond to be dated the First day of May, 1914.

City of Minneapolis, by W. G. Nye, Mayor.

Attest: Henry N. Knott, City Clerk.
Countersigned: Dan C. Brown, City Comptroller.
Registered No. 3511.
Registered No. 3287.
Registered No. 61.

Registration

This bond may be registered in the owner's name in the office of the City Comptroller, in the City of Minneapolis, such registration being noted upon the bond by said Comptroller after which no transfer shall be valid unless made upon the Comptroller's books by the registered owner and similarly noted on the bond, but the same may be discharged from registration by being transferred to bearer and the transfer to bearer being noted hereon, after which it shall be transferable by delivery, but it may be again registered as before. The registration of this bond shall not restrain the negotiability of the coupons deliv- [fol. 26] ered, but the coupons may be surrendered and the interest made payable only to the registered holder of this bond.

Date of registration	In whose name registered	City comptroller
	[The Williamsburg Savings Bank.]*	
[Jul. 17, 1914.	Brooklyn, N. Y.]*.....	[Dan C. Brown.]*
[Apr. 18, 1917.	Kountze Bros., New York, N. Y.; Henry A. C. Taylor, Esq.]*.....	[Dan C. Brown.]*
[May 15, 1917.	New York City]*.....	[Dan C. Brown.]*
	Registered No. 4168	
Feb. 27, 1922.	Henry R. Taylor, N. Y.....	Dan. C. Brown.

In accordance with the provision in this bond, the coupon sheet attached hereto has been surrendered by the holder of this bond and the coupons have been cancelled by the City Comptroller. Semi-annual interest on this bond is hereafter to be paid to the registered holder or owner upon the proper acknowledgment of the receipt thereof.

Dated Minneapolis, Minnesota, July 17, 1914.

Dan C. Brown, City Comptroller.

4687, May 4, 1927, Charles S. Shaw, New York.

Dan C. Brown, City Comptroller.

[fol. 27] Endorsement: Registered No. 1015. State of Minnesota, City of Minneapolis, Street Improvement Bond. Special Street Acquisition and Improvement No. 59. $1,000.00. 4½%. Dated May 1, 1914. Due May 1, 1928. Interest Payable Semi-Annually on May 1st and November 1st at the Fiscal Agency of the City of Minneapolis in the City of New York.

[fol. 28] EXHIBIT "B"

United States of America, State of Minnesota, City of Minneapolis

No. 2092. $25,000-00/100.

Whereas Henry R. Taylor of New York City, State of New York, has surrendered to the City Comptroller of the City of Minneapolis, $25,000-00/100 bonds of said City of the denomination of one thousand dollars each issued for Main Sewers under authority of chapter 262, General laws

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[*Words and figures enclosed in brackets erased in copy.]

of Minnesota of the year 1913 and resolution of the City Council of said City approved Nov. 5, 1913, dated Nov. 1, 1913, payable Nov. 1, 1939, and numbered 20811 to 20815, 20821 to 20832, & 20846 to 20853 incl. and has made application to exchange said bonds into registered bonds of the City of Minneapolis. Therefore; Know all men by these presents that the City of Minneapolis acknowledges itself indebted, held and firmly bound to the same extent and in the same manner as held and bound by the coupon bonds above described unto the said Henry R. Taylor of New York City, State of New York, in the sum of Twenty-five Thousand (25,000) Dollars which sum the said City of Minneapolis promises to pay at the fiscal agency of said City in the City of New York on the first day of Nov., 1939, together with interest at the rate of 4 per cent per annum [fol. 29] which interest shall be payable semi-annually on the 1st day of May and the 1st day of Nov. each year at fiscal agency until the payment in full of said principal sum. This bond is issued under and pursuant to a resolution of the City Council of the City of Minneapolis, approved April 15th, 1897.

In testimony whereof, and in pursuance of said resolution the bond is signed by the Mayor, countersigned by the City Comptroller and attested by the City Clerk of said City and the corporate seal of said City attached this 21st day of November, A. D. 1921.

George E. Leach, Mayor.

Attest: Henry N. Knott, City Clerk.

Countersigned: Dan C. Brown, City Comptroller.

To the Comptroller of the City of Minneapolis:

You will please transfer the within registered bond to —— ——.

—— ——, Holder of Bond.

Witness: —— ——.

[fol. 30] To the Comptroller of the City of Minneapolis:

You will please transfer the within registered bond to —— ——.

—— ——, Holder of Bond.

Witness: —— ——.

(Endorsement:) No. 2092. $25,000-00/100. Registered Bond of the City of Minneapolis, Minnesota. Issued in exchange for Coupon Bonds numbered 20811 to 20815, 20821 to 20832, and 20846 to 20853 incl. Interest 4 per cent per annum. Interest payable M. and N.

Resolution Authorizing and Empowering the City Comptroller to Register Bonds of the City of Minneapolis

Resolved by the City Council of the City of Minneapolis:

That in pursuance of an act of the legislature of the State of Minnesota, approved February 26th, 1897, entitled, [fol. 31] "An Act to Provide for the Registration of Municipal Bonds of the Cities of this State," the City Comptroller be and he is hereby authorized and empowered to register any of the bonds of said City which have been or hereafter may be issued on the request of the persons owning and holding the same or the person or owner to whom the same may be hereafter issued.

In all such cases when the bonds are returned to him to be registered or are registered when issued, the said City Comptroller is hereby empowered to and it shall be his duty to cancel all bonds so returned together with the unpaid coupons thereon, and issue in lieu thereof a certificate or certificates of registration amounting to the face value of such bonds, which certificates shall be in the following form: * * *

And the Mayor and City Clerk of the City of Minneapolis are hereby authorized and directed to sign and attest respectively such certificates of registration upon application of the City Comptroller, and the City Comptroller is hereby directed to countersign such certificates and deliver the same upon surrender of the coupon bonds for which they are to be exchanged, and to transfer such certificates from time to time at the request of the owner or owners of the same.

Passed, April 9th, 1897. Approved, April 15th, 1897.

[fol. 32] EXHIBIT "C"

United States of America, State of Minnesota, County of Ramsey, City of St. Paul

Registered Bond Issued in Lieu of a Like Amount of Coupon Bonds

Number 672. $50,000.00 Dollars.

Whereas, pursuant to the provisions of an Act of the Legislature of the State of Minnesota entitled: "An Act to provide for the registration of municipal bonds of the cities of this state," approved February 26, 1897 (being Chapter 22 of the Laws of Minnesota for 1897) and a resolution of the Common Council of the City of St. Paul, Minn., approved October 8, 1903, there have been surrendered to the City Comptroller of said City, for the purpose of having this registered bond issued in lieu thereof, the following described Coupon Bond of said City, to-wit, Coupon Bond numbered 19536 to 19585 inclusive, of the denomination of $1,000 each, bearing date of January 1, 1924, and maturing January 1, 1954, issued for the purpose of acquiring school sites and grounds, remodeling existing school buildings, constructing new school buildings, and providing permanent equipment therefor, under authority of Chapter —, [fol. 33] Sec. 217, City Charter Ord. 5885, app. 10/4/22, ratified 11/7/22, of the Laws of Minnesota for —— and a resolution or ordinance of the Council of said City, approved November 20, 1923, bearing interest at the rate of 4½ per centum per annum, payable semi-annually.

Now, therefore, the City of St. Paul, in the County of Ramsey and State of Minnesota, for value received hereby acknowledges itself to owe and to be firmly held and bound to the same extent and in the same manner as it was held and bound by the Coupon Bond above described to pay to Henry R. Taylor of New York, N. Y., the principal sum of Fifty Thousand Dollars ($50,000) on January 1, A. D. 1954, together with interest on said sum until paid at the rate of 4½ per centum per annum, payable semi-annually on the First days of July and January in each year; both principal and interest payable in lawful money of the United States of America, at the fiscal agency of said City in the City and State of New York.

This bond is transferable only on the registration books of said City of St. Paul, by the registered owner hereof in person or by duly authorized attorney upon surrender of this bond to the City Comptroller of said City, properly endorsed.

In case this bond is issued in lieu of more than one Coupon Bond, the registered owner hereof, or his assigns, may, in person or by duly authorized attorney surrender this Bond to the City Comptroller of said City properly en- [fol. 34] dorsed, and receive in lieu thereof two or more registered bonds, aggregating the same amount as this bond, but each of such new registered bonds shall be of the denomination of one of the Coupon Bonds originally surrendered, or some multiple thereof and shall designate the particular Coupon Bond or bonds which it represents.

In testimony whereof, and in pursuance of said Act of the Legislature of the State of Minnesota, approved February 26, 1897, and said resolution of the Common Council of the City of St. Paul, approved October 8, 1903, the corporate seal of said City has been hereto affixed and this bond signed by the Mayor, countersigned by the City Comptroller, and attested by the City Clerk of said City, this Seventh day of February, A. D. 1924.

Arthur E. Nelson, Mayor.

Countersigned: E. M. Skipton, City Comptroller.

Attest: Harry Olson, City Clerk.

[fol. 35] (Endorsement:) 672. Registered bond, $50,000.00, of the City of St. Paul. Issued to Henry R. Taylor. Dated February 7, 1924. For value received — hereby sell, assign, and transfer unto —— —— all — right, title and interest in and to — of the within Registered Bond, and do hereby irrevocably constitute and appoint —— —— Attorney to make the necessary transfer thereof on the registration books of the City of St. Paul, Minnesota. —— ——. Dated —— —, ——. In presence of —— ——.

Resolution Authorizing Certificates

A'y F No. 7238

Resolved, that the Mayor, Comptroller and City Clerk be and they are hereby authorized to issue registered bonds

of the City of St. Paul in exchange for any or all coupon bonds of said City which have heretofore been issued, upon request of the holder of such coupon bonds, and in such de-
[fol. 36] nominations as such holder may request; such exchange to be made at the office of the City Comptroller and the same to be done under the direction and supervision of the Sinking Fund committee; the manner of cancellation of such surrendered coupon bonds and the form of such registered bonds to be prescribed by said Sinking Fund Committee, as provided in the charter of said City; and the City Treasurer is authorized to pay current interest on such registered bonds by check on New York or St. Paul, as the owner may desire; provided, however, that said registered bonds so issued shall not incur any new liability on the City or extend the time of maturity of the coupon bonds for which they are exchanged, but shall only bind the City in the same manner and to the same extent as bound by said coupon bonds, all as provided in and by Chapter 22 of the Laws of Minnesota for the year 1897.

Adopted by the Assembly Oct. 1, 1903.
Adopted by the Board of Aldermen, Oct. 6, 1903.
Approved Oct. 8, 1903.

[fol. 37] EXHIBIT "D"

Number 42079. 1,000 Dollars.

United States of America, State of Minnesota, County of Hennepin, City of Minneapolis

School Bond

Know all men by these presents that the City of Minneapolis in the County of Hennepin and State of Minnesota, hereby acknowledges itself to owe and for value received promises to pay to bearer, the sum of one thousand dollars ($1,000) in lawful money of the United States of America on the first day of September, 1942, with interest thereon at the rate of four and one-half per cent (4½%) per annum, from the date hereof until paid, payable semi-annually on the first day of March and of September in each

year upon presentation and surrender of the annexed interest coupons as they severally become due and payable, both principal and interest payable at the Fiscal Agency of the City of Minneapolis, in the city and state of New York, or at the City Treasurer's Office, Minneapolis, Minnesota, at the option of the holder.

For the prompt payment of this bond, both principal and interest as aforesaid, the full, faith and credit of said city are hereby irrevocably pledged.

This bond is issued for the purpose of providing funds for the use of and to be used by the Board of Education [fol. 38] of the City of Minneapolis in the erection, construction and equipment of public school buildings and additions thereto, and for the acquisition of school sites in the city of Minneapolis, and pursuant to and in all respects in compliance with Chapter XV of the Charter of the City of Minneapolis, adopted November 2, 1920, and all acts supplemental thereto, and resolutions duly adopted by the City Council and by the Board of Estimate and Taxation of said City.

And it is hereby certified and recited that all conditions, things and acts required by law to exist, to be or to be done precedent to and in the issuance of this bond have been, have existed, and have been performed in due form and time as required by law, that the indebtedness of said City, including this bond, does not exceed any limitation imposed by law.

In witness whereof the City of Minneapolis, by its City Council and Board of Estimate and Taxation has caused this bond to be signed by its Mayor and City Clerk under the City corporate seal and countersigned by the President of the Board of Estimate and Taxation and by the City Comptroller, and the coupons hereto attached to be signed by said Mayor and City Clerk and countersigned by the President of the Board of Estimate and Taxation and by the City Comptroller by their respective facsimile signatures, and said officers by the execution of this bond do adopt as and for their respective proper signatures their [fol. 39] respective facsimile signatures appearing on said coupons, this first day of September, 1922.

George E. Leach, Mayor; Henry N. Knott, City Clerk, and Dan C. Brown, City Comptroller.

Countersigned: C. F. Keyes, President Board of Estimate and Taxation

$22.50. March 1st, 1927.

On the First day of March, 1927, the City of Minneapolis, Hennepin County, Minnesota, will pay to bearer, Twenty-two and 50/100 Dollars ($22.50) at the Fiscal Agency of the City of Minneapolis in New York City, or at the City Treasurer's Office, Minneapolis, Minnesota, at the option of the holder for interest due that date on its School Bond, dated September 1, 1922.

Coupon Number 9, Bond No. 42079.

George E. Leach, Mayor; Henry N. Knott, City Clerk, and Dan C. Brown, City Comptroller.

[fol. 40] Countersigned: C. F. Keyes, President Board of Estimate and Taxation.

(Coupons 10 to 30 inclusive follow in like amount.)

(Endorsement:) United States of America. No. 42079. State of Minnesota, County of Hennepin, City of Minneapolis. School bond. 1,000. 4½ per cent. Dated September 1, 1922, interest payable March 1, and September 1. Payable at the Fiscal Agency of the City of Minneapolis, in the City and State of New York, or at the City Treasurer's Office, Minneapolis, Minnesota.

[fol. 41] EXHIBIT "E"

Number 42094. 1,000 Dollars.

United States of America, State of Minnesota, County of Hennepin, City of Minneapolis

School Bond

Know all men by these presents that the City of Minneapolis, in the County of Hennepin and State of Minnesota, hereby acknowledges itself to owe and for value received promises to pay to bearer, the sum of one thousand dollars ($1,000) in lawful money of the United States of America

on the first day of September, 1943, with interest thereon at the rate of four and one-half per cent (4½%) per annum, from the date hereof until paid, payable semi-annually on the first day of March and of September in each year upon presentation and surrender of the annexed interest coupons as they severally become due and payable, both principal and interest payable at the Fiscal Agency of the City of Minneapolis, in the City and State of New York, or at the City Treasurer's Office, Minneapolis, Minnesota, at the option of the holder.

For the prompt payment of this bond, both principal and interest as aforesaid, the full faith and credit of said city are hereby irrevocably pledged.

This Bond is issued for the purpose of providing funds for the use of and to be used by the Board of Education of [fol. 42] the City of Minneapolis in the erection, construction and equipment of public school buildings and additions thereto, and for the acquisition of school sites in the City of Minneapolis, and pursuant to and in all respects in compliance with Chapter XV of the Charter of the City of Minneapolis, adopted November 2, 1920, and all acts supplemental thereto, and resolutions duly adopted by the City Council and by the Board of Estimate and Taxation of said City.

And it is hereby certified and recited that all conditions, things and acts required by law to exist, to be or to be done precedent to and in the issuance of this bond have been, have existed, and have been performed in due form and time as required by law, that the indebtedness of said City, including this bond, does not exceed any limitation imposed by law.

In witness whereof, the City Minneapolis, by its City Council and Board of Estimate and Taxation has caused this bond to be signed by its Mayor and City Clerk under the City corporate seal and countersigned by the President of the Board of Estimate and Taxation and by the City Comptroller, and the coupons hereto attached to be signed by said Mayor and City Clerk and countersigned by the President of the Board of Estimate and Taxation and by the City Comptroller by their respective facsimile signatures, and said officers by the execution of this bond do adopt as and for their respective proper signatures their

[fol. 43] respective facsimile signatures appearing on said coupons, this first day of September, 1922.

George E. Leach, Mayor; Henry N. Knott, City Clerk, and Dan C. Brown, City Comptroller.

Countersigned: C. F. Keyes, President Board of Estimate and Taxation.

Coupon Number 9, Bond No. 42094

$22.50. March 1, 1927.

On the first day of March, 1927, the City of Minneapolis, Hennepin County, Minnesota, will pay to bearer, Twenty-two and 50/100 Dollars ($22.50) at the Fiscal Agency of the City of Misneapolis in New York City, or at the City Treasurer's office, Minneapolis, Minnesota, at the option [fol. 44] of the holder, for interest due that date on its School Bond, dated September 1, 1922.

George E. Leach, Mayor; Henry N. Knott, City Clerk, and Dan C. Brown, City Comptroller.

Countersigned: C. F. Keyes, President Board of Estimate and Taxation.

(Coupons 10 to 42, inclusive, in like amount, follow.)

(Endorsement:) No. 42094. United States of America, State of Minnesota, County of Hennepin, City of Minneapolis. School Bond. 1,000. 4½ per cent. Dated September 1, 1922. Principal due September 1, 1943. Interest payable March 1 and September 1. Payable at the Fiscal Agency of the City of Minneapolis, in the City and State of New York, or at the City Treasurer's Office, Minneapolis, Minnesota.

[fol. 45] EXHIBIT "F"

United States of America, State of Minnesota, County of Ramsey, City of Saint Paul

School Bond

Number 13761. 1,000.00 Dollars.

Know all men by these presents, That the City of St. Paul, in the County of Ramsey and State of Minnesota, ac-

knowledges itself to owe and for value received hereby promises to pay bearer the sum of One Thousand Dollars ($1,000.00) on the first day of November, 1952, together with interest thereon from the date hereof until paid at the rate of four and one-half per cent per annum, payable semi-annually on the first days of May and November in each year as evidenced by and upon the presentation and surrender of the annexed interest coupons as they severally become due. Both principal and interest of this bond are payable in lawful money of the United States of America at the Office of the Commissioner of Finance or at the Financial Agency of the City of St. Paul in the City of New York, State of New York; and for the prompt payment of this bond, both principal and interest, at maturity, the faith and credit of the City of St. Paul is hereby pledged irrevocably.

This bond is one of a series of like date and tenor, except [fol. 46] as to rate of interest, amounting in the aggregate to the sum of One Million Dollars ($1,000,000), issued by the City for the purpose of erecting permanent school buildings. This bond is issued pursuant to an Ordinance No. 3885, passed by the Council of said City and duly signed, attested, approved and published in the manner required by the Charter of said City, and approved by the electors of the City of St. Paul at the special election held June 18, 1917, as amended by Council File No. 28655, being Ordinance No. 5277, approved April 14, 1920, and ratified by the electors of said City at the general election held May 4, 1920, also a resolution of the Council No. 42230 duly passed and approved October 9 1922, and under authority of and in all respects in full compliance with Section 217 of the Charter of the City of St. Paul, and such other sections thereof as may be applicable thereto.

It is hereby certified and recited, That all things, acts and conditions required by the constitution and laws of the State of Minnesota and the Charter of said City to happen and be done and performed precedent to and in the issuance of this bond have happened and been done and performed in regular and due form and time as required by law, and that the total indebtedness of said City, including this bond, does not exceed any constitutional or charter limitations.

In witness whereof the said City of St. Paul, by its Council has caused this bond to be sealed with its corporate seal, to be signed by its Mayor, attested by its City Clerk and [fol. 47] countersigned by its Comptroller, and each of the interest coupons hereto attached to be executed by the lithographed facsimile signature of said officers this first day of November, A. D. 1922.

Arthur E. Nelson, Mayor.

Countersigned: Jesse Foot, Comptroller.
Attest: Henry Olson, City Clerk.

No. 9. City of Saint Paul $22.50.

No. 13761

On the first day of May, 1927, the City of St. Paul, Minnesota, promises to pay to bearer Twenty-two Dollars and Fifty Cents at the office of the Commissioner of Finance, or at the Financial Agency of the City of St. Paul, in the City of New York, State of New York, for interest due that day on its School Bond, dated Nov. 1, 1922.

Arthur E. Nelson, Mayor.

Attest: Henry Olson, City Clerk.

[fol. 48] Countersigned: Jesse Foot, Comptroller.

(Coupons 10 to 60, inclusive, in like amount, follow.)

(Endorsement:) 13761. United States of America, State of Minnesota, County of Ramsey, City of Saint Paul. School Bond. $1,000. 4½%. Dated November 1, 1922. Principal Due November 1, 1952. Interest payable semi-annually, May 1st and November 1st, at the office of the Commission of Finance, in the City of St. Paul, or at the financial agency of the City of St. Paul, in the City of New York, State of New York.

[fol. 49] EXHIBIT "G"

United States of America, State of Minnesota

The Great Seal of the State of Minnesota, 1858

Rural Credit Bond, Direct Obligation of State

Number 22239. $1,000. Number 22239.

The State of Minnesota, for value received acknowledges itself to be indebted and promises to pay to bearer or in case of registration hereof to the registered holder, the sum of one thousand dollars, on the first day of June, 1954, and to pay interest thereon at the rate of four and one half (4½) per centum per annum, payable semi-annually on the 1st days of June and December in each year on the presentation and surrender of the respective coupons hereto attached as they severally become due, both principal and interest of this bond, being payable in lawful money of the United States, at the office of the State Treasurer, St. Paul, Minnesota, or at the option of the holder at the Merchants National Bank, St. Paul, Minnesota, or at the Bankers Trust Company, New York, N. Y., or at such other bank or Trust Company as may be appointed by said State in said cities of St. Paul or New York. In case of registration the prin-[fol. 50] cipal and interest hereof will be paid to the registered holder in New York or Chicago exchange. This bond is issued under and pursuant to and in strict conformity with the Constitution and laws of the State of Minnesota, including among others, Article IX, Section 10 of the Constitution, as amended, and Chapter 225, Laws of Minnesota 1923, for the purpose of raising money for the use of the Rural Credit Fund of said State to be loaned and disbursed as directed in the said statute. This bond may be registered, the registration to be certified hereon by the State Treasurer and is subject to successive registrations and transfers at the option of the holder. The coupons may be separated from this bond and surrendered to the State Treasurer for cancellation, in which case the interest will be paid to the registered holder or order. This bond is exempt from all general taxes, State, County and Municipal and is not subject to State Income Tax. It is hereby cer-

tified, recited and declared that all acts, conditions and things required to exist, happen and be performed, precedent to and in issuance of this bond have existed, happened and been performed in due time, form and manner as required by law and that this bond and the issue of which it forms a part together with all other indebtedness of said State does not exceed any constitutional or statutory limitations of indebtedness. The full faith, credit and resources of the State of Minnesota hereby are irrevocably pledged [fol. 51] for the prompt and punctual payment of the principal and interest of this bond.

In witness whereof, the State of Minnesota by its Rural Credit Bureau has caused this bond to be issued under the Great Seal of the State, and to be signed by the Chairman of said Bureau in behalf of the Bureau and attested by the Secretary of State of Minnesota, the form thereof having been approved by the Attorney General of said State the coupons attached to bear the fac-simile signatures of the said Chairman and Secretary of State and this bond to be dated the first day of June, 1924.

Minnesota Rural Credit Bureau, by Edwin J. Oppliger, Chairman.

Attest: Mike Holm, Secretary of State.

Form Approved: Clifford L. Hilton, Attorney General.

This bond has been presented to the State Auditor of the State of Minnesota and due record thereof has been made in his office.

Ray P. Chase, State Auditor.

This bond may be registered in the holder's name on the State Treasurer's books at St. Paul, Minn., such registration being noted upon the bond by said Treasurer after [fol. 52] which no transfer shall be valid unless made on the Treasurer's books by the registered holder and similarly noted on the bond, but the same may be discharged from registration by being transferred to bearer after which it shall be transferable by delivery, but it may be again registered as before. The registration of the bond shall not restrain the negotiability of the coupons by delivery merely, but the coupons may be surrendered and the

interest made payable only to the registered holder of the bond.

Date of registration	In whose name registered	State treasurer
Sept. 15, 1924.	Henry R. Taylor, 20 Exchange Place, New York City.	Henry Rines, Treasurer by W. C. Martin, Deputy.

In accordance with a provision in this bond the coupon sheet issued herewith has been surrendered by the holder of this bond and the coupons have been cancelled by the Treasurer. The semi-annual interest on the bond is hereafter to be paid to the registered holder or order in New York or Chicago exchange, upon the proper acknowledgment of the receipt thereof.

Dated St. Paul, Minn., September 15th, 1924.

Henry Rines, State Treasurer, State Treasurer, Minnesota, by W. C. Martin, Deputy.

[fol. 53] (Endorsement:) Number 22239. United States of America, State of Minnesota. The Great Seal of the State of Minnesota, 1858. $1,000.00. Rural Credit Bond. 4½ per cent. Principal due June 1st, 1954. Interest Payable June 1st and December 1st. Principal and Interest Payable at the office of the State Treasurer, St. Paul, Minnesota, or at the option of the holder at The Merchants National Bank, St. Paul, Minnesota, or at the Bankers Trust Company, New York, N. Y. or at such other bank or Trust Company as may be appointed by said state in said Cities of St. Paul or New York.

[fol. 54] Exhibit "H"

United States of America, State of Minnesota

Certificate of Indebtedness

$1,000. No. 11101. $1,000.

This is to Certify that the State of Minnesota for value received is indebted and promises to pay to bearer, or in case of registration to registered holder, hereof, the sum of

one thousand dollars on the first day of August, A. D. 1928, and to pay interest thereon at the rate of five per centum per annum, payable semi-annually on the first days of February and August in each year, on the presentation and surrender of the respective coupons hereto attached as they severally become due, both principal and interest of this certificate being payable in lawful money of the United States of America, at the option of the holder, at the office of the State Treasurer, St. Paul, Minn., or at the Merchants National Bank, St. Paul, Minn., or at the Bankers Trust Company, New York, N. Y. or at such other bank or trust company as may be appointed by said State in said cities of St. Paul or New York. In case of registration, the principal and interest hereof will be paid to the registered holder in New York or Chicago exchange. This certificate is issued under and pursuant to Chapter 49 of the Law of Minnesota, Extra Session of 1919, entitled; "An act to provide relief and assistance for certain officers, soldiers, sail-
[fol. 55] ors, marines, nurses, and the surviving wives of certain deceased officers, soldiers, sailors, marines, and nurses, providing for issuance of certificates of indebtedness for the raising of necesary funds therefor, and for the retirement of the same by money raised from a tax levy provided therefor, and the creation of a Board to issue such certificates and supervise the expenditure and disbursement of funds and appropriating $20,000,000.00 therefor, and making it a misdemeanor for any claimant to transfer or to attempt to transfer his right or claim and for any other person to acquire or to attempt to acquire any interest therein before the issuance of the Auditor's warrant therefor," approved September 22, 1919, and under and in full compliance with the Constitution and statutes of said State. It is hereby certified, recited and declared that all acts conditions and things required to exist, happen and be performed precedent to and in the issuance of this certificate have existed, happened and been performed in due time, form and manner as required by law, and that the amount of this certificate, together with all other indebtedness of said State does not exceed any limit prescribed by the Constitution or Statutes of said State. The full faith and credit of the State of Minnesota are hereby irrevocably

pledged to the punctual payment of the principal and interest hereof. This certificate may be registered in the name of the holder as to principal and interest, or as to principal only, in the form and manner enforced hereon. [fol. 56] In witness whereof the State of Minnesota has caused this Certificate to be issued under the Great Seal of said State, attested by the Secretary of State thereof, and has causd this certificate to be signed by the members of the Soldiers' Bonus Board of said State, viz: the State Auditor, the State Treasurer, and the Adjutant General, and to be attested by the State Auditor under the seal of his office, and has caused the interest coupons hereto attached to bear the facsimile signatures of the members of said Board and the Certificate to be dated the second day of February, 1920.

W. H. Rhinow, Adjutant General; Henry Rines, State Treasurer; J. A. O. Preus, State Auditor, the Soldiers' Bonus Board, State of Minnesota.

Attest: Julius A. Schmahl, Secretary of State.

This certificate is issued in compliance with the act referred to therein and due record thereof has been made in this office.

Attest:

J. A. O. Preus, State Auditor.

[fol. 57] The State of Minnesota

No. 15. $25.00.

On August 1st, 1927, will pay to bearer in lawful money of the United States, at the option of the holder at the office of the State Treasurer, St. Paul, Minn., or at the Merchants National Bank, St. Paul, Minn., or at the Bankers Trust Company, New York, N. Y., or at such other bank or trust company as may be appointed by said state in said cities of St. Paul or New York, the sum of Twenty-five and no/100 Dollars, being six months interest then due on its certificate of indebtedness No. 11101.

W. F. Rhinow, Adjutant General; Henry Rines, State Treasurer; J. A. O. Preus, State Auditor, the Soldiers' Bonus Board of the State of Minnesota.

[fol. 58] The State of Minnesota

No. 16. $25.00

On February 1st, 1928, will pay to bearer in lawful money of the United States, at the option of the holder at the office of the State Treasurer, St. Paul, Minn., or at the Merchants National Bank, St. Paul, Minn., or at the Bankers Trust Company, New York, N. Y., or at such other bank or trust company as may be appointed by said state in said cities of St. Paul or New York, the sum of Twenty-five and no/100 Dollars, being six months interest then due on its certificate of indebtedness No. 11101.

W. F. Rhinow, Adjutant General; Henry Rines, State Treasurer; J. A. O. Preus, State Auditor, the Soldiers' Bonus Board of the State of Minnesota.

[fol. 59] The State of Minnesota

No. 17. $25.00.

On August 1st, 1928, will pay to bearer in lawful money of the United States, at the option of the holder at the office of the State Treasurer, St. Paul, Minn., or at the Merchants National Bank, St. Paul, Minn., or at the Bankers Trust Company, New York, N. Y., or at such other bank or trust company as may be appointed by said state in said cities of St. Paul or New York, the sum of Twenty-five and no/100 Dollars, being six months interest then due on its certificate of indebtedness No. 11101.

W. F. Rhinow, Adjutant General; Henry Rines, State Treasurer; J. A. O. Preus, State Auditor, the Soldiers' Bonus Board of the State of Minnesota.

[fol. 60] (Provision for Registration)

This certificate may be registered in the holder's name on the State Treasurer's books at St. Paul, Minn., such registration being noted hereon by said State Treasurer, after which no transfer shall be valid unless made on the State Treasurer's books by the registered holder and similarly noted hereon. This certificate may be discharged from registration by being transferred to bearer, after which it

shall be transferable by delivery, but it may be again registered as before.

Registration of the certificate shall not restrain the negotiability of the coupons by delivery merely, unless the coupons are surrendered and the interest made payable only to the registered holder of the certificate.

Date of registration	In whose name registrated	State treasurer
.....	.....	.....
.....	.....	.....
.....	.....	.....

In accordance with a provision in this Certificate of Indebtedness the coupon sheet issued herewith has been surrendered by the holder of this certificate and the coupons have been cancelled by the State Treasurer. The interest on this certificate is hereafter to be paid to the registered [fol. 61] holder or order upon the proper acknowledgement of the receipt thereof.

Dated St. Paul, Minn., —— —, 19 —.

——— ——, State Treasurer.

(Endorsement:) 11101. State of Minnesota. Certificate of Indebtedness. $1,000. 5 per cent. Dated February 2, 1920. Due August 1, 1928. Interest payable August first and February first at State Treasurer's office, St. Paul, Minnesota, or at State Fiscal Agencies in St. Paul, Minnesota, or New York, City.

[fol. 62] In District Court of Ramsey County

Stipulation re Hearing on Appeal

It Is Hereby Stipulated and Agreed by and between the State of Minnesota and the executors of the last will and testament of Henry R. Taylor by their respective attorneys, that the above entitled appeal may be heard by Hon. Charles M. Bechhoefer, Judge of the District Court for Ramsey County Minnesota, sitting in chambers on the 9th day of September, 1927, upon the stipulation of facts filed herein and upon the original papers and records in this proceeding heretofore transmitted to the Clerk of said Dis-

trict Court by the Attorney General of Minnesota in accordance with Section 2302 General Statutes of Minnesota, 1923.

Dated September 9, 1927.

Clifford L. Hilton, Attorney General of the State of Minnesota; John F. Bonner, Assistant Attorney General in Charge of Inheritance Tax Matters, Attorneys for the State of Minnesota. Cadwalader, Wickersham & Taft, Davis, Severance & Morgan, Attorneys for Appellants, the Executors of the last Will and Testament of Henry R. Taylor.

[fol. 63] In District Court of Ramsey County

Stipulation re Settled Case

It Is Hereby Stipulated and Agreed by and between the parties herein by their respective attorneys that all of the evidence in the above entitled case is contained in a certain stipulation of fact herein, made and entered into on the 8th day of July, 1927, and the exhibits thereto attached, and that the foregoing may be allowed as and for the settled case in this action.

Dated November 15th 1927.

Clifford L. Hinton, Attorney General. Albert F. Pratt, Assistant Attorney General in Charge of Inheritance Tax Matters. John F. Bonner, Assistant Attorney General. Davis, Severance & Morgan, Cadwalder, Wickersham & Taft, Attorneys for Executors.

[fol. 64] In District Court of Ramsey County

Order Settling Case

I hereby certify that the foregoing and attached case contains all of the evidence introduced and offered by the respective parties to the cause, and all objections, rulings, and exceptions in connection with the introduction of said evidence, and all proceedings had on the trial of said ac-

erty upon his death, as is made by said Attorney General in his computation of the Minnesota tax for the sum paid or to be paid by said estate as a Federal Estate Tax to the United States.

ORDER

Upon the foregoing Findings of Fact and Conclusions of Law, it is hereby

Ordered that the Findings and Determination of the Attorney General dated August 27, 1926, be corrected, amended and modified to conform to the said Findings of Fact and Conclusions of Law.

Dated October 14, 1927.

Charles Bechhoefer, District Judge.

IN DISTRICT COURT OF RAMSEY COUNTY

MEMORANDUM

The decedent Henry R. Taylor, at the date of and for a long time prior to his death, owned, held and kept in the state of New York, his place of residence and domicile, certain registered and unregistered Minnesota certificates of indebtedness and bonds and Minnesota municipal bonds.

The Attorney General, acting under the provisions of Sec. 2302, G. S. 1923, made findings and determined that the State is entitled to have and receive from the estate [fol. 68] of said decedent and the legatees and beneficiaries, an inheritance tax upon said bonds to be transferred to said legatees and beneficiaries.

The executors of the estate of the decedent have appealed from such findings and determination and claim, in part, that at the time of the death these bonds and certificates were physically present in the state of New York, and were tangible property; that they were bequeathed pursuant to the laws of New York, wherein the decedent then resided and was domiciled, and that the present attempt to levy an inheritance tax is in violation of the constitutional rights of those interested.

Sec. 2292, G. S. 1923, provides for the imposition of a tax upon any transfer of personal property to any person, association or corporation (except certain public corporations), when a transfer is by will or intestate law, of property within the state or within its jurisdiction and the decedent was a non-resident of the state at the time of the death.

"The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the state. * * *."

"It is undoubtedly true that the actual situs of personal property which has a visible and tangible existence, and not the domicile of its owner, will, in many cases, determine the State in which it may be taxed. The same thing is true of public securities consisting of state bonds and bonds of [fol. 69] municipal bodies, and circulating notes of banking institutions; the former, by general usage, have acquired the character of and are treated as property, in the place where they are found, though removed from the domicile of the owner; the latter are treated and pass as money wherever they are. But other personal property, consisting of bonds, mortgages and debts generally, has no situs independent of the domicile of the owner, and certainly can have none where the instruments, as in the present case, constituting the evidences of debt, are not separated from the possession of the owners." State Tax on Foreign-held Bonds, 15 Wall. 300, 21 L. ed. 179, 186, 188.

And in Rhode Island Hospital Trust Co. v. Doughton, 270 U. S. 80, 70 L. ed. 475, the Court, speaking through Mr. Chief Justice Taft, said:

"It goes without saying that a state may not tax property which is not within its territorial jurisdiction." State Tax on Foreign-held Bonds, supra, and other authorities.

"The tax here is not upon property, but upon the right of succession to property, but the principle that the subject to be taxed must be within the jurisdiction of the state applies as well in the case of a transfer tax as in that of a property tax. A State has no power to tax the devolution of the property of a nonresident unless it has jurisdiction of the property devolved or transferred. In the matter of

[fol. 70] intangibles, like choses in action, shares of stock and bonds, the situs of which is with the owner, a transfer tax of course may be properly levied by the state in which he resides."

Our statute recognizes this well established principle that the property to be taxed must be either within the state or, if owned by a non-resident, within its jurisdiction at the time of the death.

In Southern Ry. Co. v. Kentucky, 71 L. ed. (U. S.) 574 578 (advance sheets), the Court, speaking through Mr. Justice Butler, said that the objections made in the state court "went to the point that, as proposed to be applied and enforced, the state statutes would operate to tax property outside and beyond the jurisdiction of Kentucky in contravention of the 14th Amendment, and the objections were sustained and the judgment of the lower court was reversed. And to the same effect, see Wachovia Bank & Trust Co. v. Doughton, 71 L. ed. (U. S.) 250—advance sheets; and Frick v. Pennsylvania, 268 U. S. 473, 69 L. ed. 1058, 42 A. L. R. 316.

The State cites Blackstone v. Miller, 188 U. S. 189, 47 L. ed. 439, in support of its position. That case involved debts owing by two New York debtors, one—a firm, and the other—a trust company, and the decedent at the time of his death was domiciled in Illinois. The case dealt with the right of the State to tax money on deposit in New York, and it was held that power over the person of the debtor conferred jurisdiction and that the state of New [fol. 71] York, having such jurisdiction, had the right to impose a tax upon the transfer of this property, for the law of that state furnishes the means to compel payment.

In Walker v. People, 64 Colo. 143, 171 Pac. 747, 8 A. L. R. 855, which presented the question of the right to levy a succession tax upon the transfer of unregistered corporate bonds of a Colorado corporation, held by a resident of New York, the Court denied the right to levy an inheritance tax, and distinguished the Blackstone case cited in support of such right. The Court said that:

"The contention of defendant in error can prevail only upon the theory laid down in Blackstone v. Miller, 188 U. S. 189 * * *, to the effect that for inheritance tax pur-

poses a debt may be taxed at the domicile of the debtor; but this was declared where the property was physically in the taxing state, and ancillary administration was in progress in its courts, and cannot be considered an authority for the imposition of the tax under consideration. In any event, bonds, such as are here involved, are specifically excepted by that opinion from the operation of the special rule therein laid down."

The Court pointed out that in Blackstone v. Miller, supra, the Court had no intention to overturn its decision in State Tax on Foreign-held bonds, supra, so far as it affected bonds and that this is clearly evident from the opinion therein, where (188 U. S. 206), the Court says:

[fol. 72] "There is no conflict between our views and the point decided in the case reported under the name of State Tax on Foreign-held Bonds, supra. The taxation in that case was on the interest on bonds held out of the state. Bonds and negotiable instruments are more than merely evidences of debt. The debt is inseparable from the paper which declares and constitutes it, by a tradition which comes down from more archaic conditions. Bacon v. Hooker, 177 Mass. 335, 83 Am. St. Rep. 279, 58 N. E. 1078. Therefore, considering only the place of the property, it was held that bonds held out of the state could not be reached. The decision has been cut down to its precise point by later cases. (authorities.)"

The taxability of bonds such as are here involved was considered in a very recent case—Appeal of Silberman, 134 Atl. Rep. (Conn.) 778. It appeared that Robert B. Hirsch died on September 23, 1924, domiciled at Stamford, Connecticut. His estate consisted in part of State and municipal bonds which were physically present in New York at the time of the death. The Court held that "State and municipal bonds which pass from hand to hand on delivery are treated as a species of tangible property and have come to be recognized as such," and, in support of this holding, the Court cited State Tax on Foreign-held Bonds, supra, and Westinghouse Electric & Mfg. Co. v. Los Angeles County, 188 Cal. 491; 205 Pac. 1076. Being tangible personal property, under the Frick case, the state and

[fol. 73] municipal bonds were "subject to a transfer tax in New York where they were found and nowhere else." In re Silberman (Sub. 15, 16), supra.

To the same effect, see McLaughlin v. Cluff, 66 Utah 245, 240 Pac. 161, 42 A. L. R. 347 and note. In that case, the bonds under consideration at no time were actually or physically within the state of Utah, nor within the jurisdiction of that state. The statute, like ours, by its terms, limited the right to impose inheritance taxes to property within the jurisdiction of the state. It was held that the decision in the Blackstone case was not controlling and that the bonds sought to be taxed, issued by a local railroad company and held at the time of the death by a resident of a foreign country at the place of his residence and secured on land within and without the state, are not subjected to a succession tax by a statute imposing such tax upon all property within the jurisdiction of the state, whether belonging to the inhabitants of the state or not, which passes by will or laws of inheritance.

The case In re Lowell's Estate, 208 App. Div. 201, 203 N. Y. S. 312, (affirmed in 147 N. E. 183) involved the taxability of certain unsecured bonds registered in New York, representing the obligation of a New York corporation, owned by a non-resident of New York and not physically within that state at the time of the death; held, that these [fol. 74] bonds were not property within the state and their transfer cannot be subjected to a tax law taxing the bonds of a domestic realty corporation owned by non-resident decedents, insofar as it taxes such bonds located in another state, was held unconstitutional.

See also Fuller v. South Carolina Tax Commission, 128 S. C. 14, 121 S. E. 478, and a very recent decision, Commonwealth v. Huntington (Va.) 138 S. E. 650.

State v. Chadwick, 133 Minn. 117, involved the transfer of certain railroad bonds, owned by a resident of Illinois and in his possession there at the time of his death. The persons inheriting were residents of Illinois. It appeared that the railway was subject to jurisdiction in several states, including Minnesota, and that in the enforcement of payment of the bonds it would not be necessary to invoke the laws of Minnesota or resort to its courts. The appellants sought to distinguish the case from State ex rel. Graff

v. Probate Court, 128 Minn. 371, which involved the transfer of certain promissory notes and book accounts, unlike the Chadwick case in which the transfer of a corporate bond registered at the New York office of the corporation was considered. The Court held that since the railroad was subject to jurisdiction in other states through which it passes and where the debt can be enforced and adequate remedies given, the fact that the mortgage covers property in Minnesota does not give it a taxable situs supporting a [fol. 75] succession tax.

The decision in the Chadwick case appears to indicate that the right of this state to tax depended upon something more than that the domicile or residence of the bond debtor should be within the state. If the test of the right to tax in the transfer of these bonds was the place of domicile of the debtor, the fact that the bond debtor had places of business in more than one state would have been immaterial. But the Court did not choose to give as broad a construction as given in the Blackstone case and held that the bonds were not taxable merely upon the broad ground that "Power over the person of the debtor confers jurisdiction."

The State urges that under the conditions here presented the registered bonds are subject to an inheritance tax, and cites Bliss v. Bliss, 221 Mass. 201, 109 N. E. 148, in support of this claim. In that case, the Court said that "the transfer cannot become effective without bringing the bond into this jurisdiction and submitting it to the inspection and registration of the officers of the state or compelling the performance of these duties by aid of state courts," and it was held that a registered bond owned by a non-resident and kept at his domicile is subject to a succession tax, for the reason that resort must be had to the aid of the courts of Massachusetts to compel a transfer of the bond. The Court held that the doterine of Blackstone v. Miller, supra, governed. In reaching its conclusion, the Court treated [fol. 76] bonds as not negotiable in the ordinary sense.

This view that a registered bond is not negotiable is opposed by the decision in Kelly v. Bell (Ind. App.) 83 N. E. 773, holding that "it is not necessary, in order to convey the legal title to registered bonds, that the bonds be surrendered and new ones taken, but a proper indorsement and delivery is all that is necessary." Upon the question of

negotiability, see 2 Fletcher Cyclopedia Corporations, 1974, Sec. 1010. Our legislative policy, as shown by recent Minnesota legislation, indicates a tendency to favor negotiability of bonds. See Chapter 416, Laws of 1927.

The bonds involved In re Lowell's Estate, supra, were registered. In the decision which was filed nearly nine years subsequent to that in the Bliss case, (affirmed by the Court of Appeals) the fact that the bonds were registered was given no consideration. The registered bonds in the Lowell case were held under conditions similar to those in the instant case, and the Court held that they were not taxable, an interpretation opposed to the interpretation in the Bliss case.

"Municipal bonds and securities of that class, which are recognized as a commodity on the market and pass from hand to hand on delivery, are commonly treated as a species of tangible property in themselves, and, on this ground, have been frequently held taxable as property wherever actually located."

Westinghouse Electric & Mfg. Co. v. Los Angeles County, supra.

[fol. 77] As stated, in the Bliss case, the Court held that the decision in Blackstone v. Miller governed. In the Frick case, the Court pointed out that Blackstone v. Miller "related to intangible personality, which has been regarded as on a different footing from tangible personality." This recent ruling of the highest court finally determined the proper interpretation.

In the Frick case the Court denied the power of the State of the domicile to exact a succession or inheritance tax in respect of tangible personal property having an actual situs in another state. In that case, it appeared that Frick at the time of death was domiciled in Pennsylvania, and the State claimed the right to impose a succession tax on certain tangible personal property of the decedent having an actual situs in other states. This claim was upheld by the Pennsylvania Supreme Court and upon appeal its decision was reversed and the power to exact such tax was denied.

If, then, the registered bonds here involved are tangible personality, under the conditions here presented, then, un-

der the principle laid down in the Frick case, they are not taxable. The question must be determined from these conditions, and not from the means required to procure a transfer.

The situation of a stockholder differs from that of a bondholder. The holder of the bonds is merely a creditor, but capital stock represents the interest of its owner in the corporation, and the rights of such owner rest on the laws of the state which created the corporation.

State ex rel. Bodman v. County of St. Louis, 142 Minn. 314.

[fol. 78] As to deduction or allowance for the amount of money paid in the state of New York as a tax upon the transfer of decedent's property, see Hollis et al. v. Jackson, 136 N. E. (Mass.) 162.

Beckhoefer, J.

In District Court of Ramsey County

Notice of Appeal

To Messrs. Davis, Severance and Morgan, attorneys for the executors of the last will and testament of Henry R. Taylor, deceased, and to N. C. Robinson, clerk of said District Court:

You Will Please Take Notice, that the State of Minnesota, appellant herein, appeals to the Supreme Court of the State of Minnesota from that part of the order of said District Court entered herein on October 14, 1927, correcting, amending, modifying and setting aside the findings and determination of the Attorney General of the State of Minnesota dated August 27, 1926, and from the whole thereof.

Dated October 31, 1927.

Clifford L. Hilton, Attorney General; Albert F. Pratt, Assistant Attorney General in Charge of Inheritance Tax Matters; John F. Bonner, Assistant Attorney General, Attorney for Appellant.

[fol. 79] In Supreme Court of Minnesota

1927

29999

In the Matter of the Inheritance Tax on the Estate of Henry R. Taylor, Deceased

State of Minnesota, Appellant,

vs.

Mouns Taylor et al., as Executors of the Last Will and Testament of Henry R. Taylor, Deceased, Respondents

Assignments of Error

1. The court erred in holding that the state of Minnesota has no jurisdiction to tax the transfer of the bonds or certificates involved herein.

2. The court erred in holding that an attempt by the state of Minnesota to impose an inheritance tax on the bonds or certificates involved herein is unconstitutional as violative of the fourteenth amendment of the United States Constitution and the due process clause of the United States Constitution.

3. The court erred in finding that the bonds and certificates involved herein do not constitute property within the state of Minnesota so as to render their transfer subject to the state inheritance tax.

4. The court erred in relieving respondents from the payment of any inheritance tax to the state of Minnesota [fol. 80] upon the transfer of the bonds or certificates in question.

5. The court erred in holding that the inheritance tax paid, or to be paid, the state of New York should be deducted from the inheritance tax to be paid the state of Minnesota.

6. The court erred in making the following conclusions of law:

"1. That the bonds of the City of Minneapolis, of the City of Saint Paul, and of the State of Minnesota, and the certificates of indebtedness of the State of Minnesota listed in the Attorney General's Findings and Determination bearing date August 27, 1926—being owned by decedent Henry R. Taylor, a resident of the State of New York and held within that state at the time of his death—and upon the transfer of which, under decedent's will, the State of Minnesota seeks to impose a tax as appears from said Findings and Determination of said attorney general, do not constitute property of the decedent within the State of Minnesota and subject to its jurisdiction so as to render the said transfer thereof subject to an inheritance tax under the Minnesota laws.

"2. That the State of Minnesota is without jurisdiction to tax the transfer of said state and city bonds and said state certificates of indebtedness.

"3. That said Findings and Determination of the Attorney General and the action of the State of Minnesota in attempting to impose an inheritance tax upon the said transfer of said state and city bonds and said state certificates of indebtedness, are in violation of the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States and are in contravention of the due process clause of said amendment and void.

[fol. 81] "4. That the said Findings and Determination of the Attorney General dated August 27, 1926, should be set aside insofar as they find and determine that said state and municipal bonds and said state certificates of indebtedness constitute property of the decedent within the State of Minnesota and subject to its jurisdiction so as to render the said transfer thereof subject to an inheritance tax under the Minnesota laws, and that said Findings and Determination of the Attorney General should be corrected, amended and modified accordingly.

"6. That the Findings and Determination of the Attorney General dated August 27, 1926, should be corrected, amended and modified so as to provide for and make, in the computation of the Minnesota inheritance tax, the same cor-

responding deduction or allowance for the amount of money paid or to be paid to the State of New York as a tax upon the transfer of said decedent's property upon his death, as is made by said Attorney General in his computation of the Minnesota tax for the sum paid or to be paid by said estate as a Federal Estate Tax to the United States." (pp. 65-67, ff. 193-201 Record.)

7. The court erred in ordering the findings and determination of the attorney general corrected, amended and modified to conform with the findings of fact and conclusions of law.

Dated January 3, 1928.

Albert F. Pratt, Attorney General; John F. Bonner, Assistant Attorney General, Attorneys for Appellant, 102 State Capitol, St. Paul, Minn.

[fol. 82] [File endorsement omitted]

IN SUPREME COURT OF MINNESOTA

No. 98

[Title omitted]

Ramsey County, Wilson, C. J.

Syllabus

1. In the imposition of an inheritance tax in Minnesota, public securities consisting of state bonds, certificates of indebtedness and bonds of municipalities owned by a nonresident at the time of his death are tangibles and are treated as property in the state where they are found. To subject them, when out of our state, to the operation of our inheritance tax law would be in violation of the 14th Amendment to the United States Constitution.

2. The rule applies to both registered and unregistered bonds.

3. To ascertain the "clear value" of the property upon which the inheritance tax is to be imposed it is proper to

deduce the amount paid as an inheritance or succession tax in another state.

Affirmed.

OPINION—Filed April 13, 1928

The state appealed from an order modifying and reversing the findings of the Attorney General made on an application by the executors to determine the inheritance tax [fol. 83] due the state of Minnesota from the estate of Henry R. Taylor, deceased.

Decedent was a resident of New York. At his death he owned bonds issued by the cities of St. Paul and Minneapolis, rural credit bonds issued by the State of Minnesota, and certificates of indebtedness of the State of Minnesota issued by the Soldiers' Bonus Board. The aggregate value with interest accrued is $344,377.16 of which $175,000 are registered in the name of the deceased, the remainder being payable to bearer.

1. If the securities had consisted of mere debts, promissory notes or promissory notes secured by mortgages, the state would have jurisdiction to impose and collect the inheritance tax. At least such has been our holding. State v. Western Union Tel. Co., 96 Minn. 13, State ex rel. Graff v. Probate Court, 128 Minn. 371; State v. Chadwick, 133 Minn. 117; State ex rel. Shoemaker v. Probate Court, 168 Minn. 508. These decisions find support in Liverpool, etc., Ins. Co. v. Orleans Assessor, 221 U. S. 346; Met. Life Ins. Co. v. New Orleans, 205 U. S. 395; Buck v. Beach, 206 U. S. 392 wherein it is said: "The rule giving jurisdiction where the specialty may be found, has no application to a promissory note." In Wheeler v. Sohmer, 233 U. S. 434 the Buck case is distinguished upon the theory that a distinction may exist to permit the operation of an inheritance tax when the presence of the property within the state is insufficient to permit the imposition of a property tax—a distinction which has been somewhat jarred by the case of Rhode Island Trust Co. v. Doughton, 270 U. S. 69. But in the latter case bonds are, perhaps inadvertently, included in "intangibles."

Public securities consisting of state bonds, certificates of indebtedness, bonds of municipalities, like circulating notes

of banking institutions, are in a distinct class and have acquired the character of and are treated as property in [fol. 84] the place where they are found, regardless of the domicile of the owner; and such securities are treated and pass as money wherever they are. This theory and conception of the law is now well established in the understanding of modern business. Such public securities are considered and recognized as more than mere evidences of debt, which are treated as inseparable from the papers which declare and constitute them and they are, not wholly arbitrarily, advanced to this special class because of the integrity of the public faith pledged for their payment and because of their concrete tangible form. State Tax on Foreigh-Held Bonds, 15 Wall. 300; New Orleans v. Stempel, 175 U. S. 309; Blackstone v. Miller, 188 U. S. 189; Buck v. Beach, 206 U. S. 392; Wheeler v. Sohmer, 233 U. S. 434; De Ganary v. Lederer, 250 U. S. 376, 381; McGuier v. Grefry, 253 U. S. 12, 15; Dillon Mun. Corp., 5th Ed. §1399; Appeal of Silberman, 134 Atl. 778.

This principle finds support in a public policy which encourages making public securities attractive to investors so that they may be floated on terms most advantageous to the public. It results in a holding that such securities are tangible property. When so considered the matter of taxation is simple. The power of taxation is necessarily limited to subjects within the jurisdiction of the state. State Tax on Foreign-Held Bonds, supra; McCullock v. Maryland, 4 Wheat. 316, 429; Frick v. Pennsylvania, 268 U. S. 473. This is true whether the tax is upon property or is an inheritance tax. The devolution of the property of a non-resident cannot be taxed unless the state has jurisdiction of the property. Rhode Island Trust Co. v. Doughton, 270 U. S. 69. The tax should be imposed in the state where tangible property is located. We believe the power of taxation must [fol. 85] eventually be construed so that such property can be subjected to an inheritance tax in but one state. The legislature has no authority to enact a law to operate upon property in another state. Jurisdiction is as necessary to valid legislation as to valid judicial action. If we construe the law imposing the inheritance tax as operative upon or applicable to the property here involved we are of the opinion that it would be in violation of the 14th Amend-

ment to the U. S. Constitution. Met. Life Ins. Co. v. New Orleans, 205 U. S. 395; Frick v. Pennsylvania, supra; Union Refrigerator Transit Co. v. Kentucky, 199 U. S. 194; U. S. v. Bennett, 232 U. S. 299, 306. Under our decisions ordinary debts and promissory notes, secured or unsecured, are not assimilated into specialties so as to become tangibles within the doctrine stated.

2. The fact that some of the bonds were registered cannot change the rule. They are still negotiable the same as if payable to bearer. The matter of registration relates to the things to be done to effectuate the negotiation so as to preclude an equitable defense by the maker against the transferor. Aside from this the registration has no significance, except for the benefit and protection of the holder. The registered bonds may be successfully transferred time and time again by endorsement and delivery regardless of the want of registration. Any owner may surrender them and take new ones in his own name. The matter of registration cannot be a controlling element.

3. By G. S. 1923, § 2293 the inheritance tax is imposed upon "the clear value of such interest in such property" [fol. 86] to which the beneficiary is entitled. To find the "clear value" it is proper to consider and deduct the amount paid as an inheritance or succession tax in another state. For the purpose of ascertaining the "clear value" this item of expense should be applied to reduce the total net value of the property just the same as a Federal Estate Tax which we have held deductible. State ex rel. Smith v. Probate Court, 139 Minn. 210; See Frick v. Pennsylvania, supra. This subdivision of the opinion relates to other property in the estate which is concededly subject to the tax.

Affirmed.

Wilson, C. J.

Hilton, J., took no part.

[fol. 87] IN SUPREME COURT OF MINNESOTA

[Title omitted]

PETITION FOR REARGUMENT

Comes now the State of Minnesota, and petitions the court for reargument of the first two questions decided by this court in the above entitled case upon the following grounds:

I

That so much of the decision of this court holding that public securities, state bonds, certificates of indebtedness, and bonds of municipalities, owned by a non-resident at the time of his death are tangibles and are treated as property in the state where they are found, is squarely in conflict with a decision of the United States Supreme Court decided since this court decided the case at bar.

II

That so much of the opinion of this court which holds that to subject such bonds when out of our state to the operation of our inheritance tax law would be in violation of the Fourteenth Amendment to the United States Constitution, is squarely in conflict with and contrary to the decision of the United States Supreme Court hereinbefore referred to.

[fol. 88]

III

That as the United States Supreme Court has held that bonds of the character involved in the case at bar are intangible property and in the same class for taxation purposes as promissory notes, simple debts, and other choses in action, under the previous decision of this court the State of Minnesota has the right to levy an inheritance tax on the securities involved in the case at bar.

G. A. Youngquist, Attorney General. John F. Bonner, Assistant Attorney General.

[fol. 89] IN SUPREME COURT OF MINNESOTA

[Title omitted]

ORDER SETTING CAUSE FOR REARGUMENT—May 21, 1928

SIR: You will take notice that on this date the following order was entered in the above entitled cause:

Ordered that this cause be and is hereby set for argument Tuesday May 29th, 1928.

Yours respectfuly, Grace Kaercher Davis, Clerk Supreme Court.

[fol. 90] [File endorsement omitted.]

IN SUPREME COURT OF MINNESOTA

No. 98

[Title omitted]

Ramsey County

Wilson, C. J.; Dibell J. dissents

Syllabus

1. In the imposition of an inheritance tax in Minnesota, state bonds, state certificates of indebtedness and bonds of municipalities owned by a non-resident at the time of his death are intangibles having a situs at the domicile of the owner.

2. Such intangibles are subjected to an inheritance tax in this state upon the theory that the owner may invoke our laws. State ex rel. Graff v. Probate Court, 128 Minn. 371, and State ex rel. Marsh v. Probate Court, 168 Minn. 508, followed;

Reversed

OPINION—Filed Sept. 28, 1928

Upon Reargument

We are of the opinion that our holding that the securities here involved are tangibles has been reversed by the

recent case of Silberman vs. Blodgett, 48 Sup. Ct. Rep. 410, filed April 16, 1928. So construing the Silberman case, it reduces these securities to mere choses in action. Consequently our opinions cited in Subdivision 1 of the opinion are applicable. This is upon the theory that the owner must invoke the laws of this state to enforce the securities. State ex rel. Graff v. Probate Court, 128 Minn. 371, 150 N. W. 1094; State ex rel. Marsh v. Probate Court, 168 [fol. 91] Minn. 508, 210 N. W. 389. These cars are grounded in the doctrine of Blackstone v. Miller, 188 U. S. 189, which is either an exception to, or inconsistent with, the rule of Rhode Island Trust Co. v. Doughton, 270 U. S. 69, holding that jurisdiction is as necessary for the imposition of an inheritance tax as a property tax; and that a state has no power to tax the devolution of property of a non-resident unless it has jurisdiction of the property devolved or transferred. It is our aim to follow the decisions of the Supreme Court of the United States, since we are construing a provision of the Federal constitution, although our own state constitution contains a similar provision.

The opinion in the Silberman case is not necessarily inconsistent with the result we reached in this case because the domicile of the decedent may be a controlling element. But, in view of our previous holdings, it seems that we must logically reach an opposite conclusion from the fact that these securities are intangibles and not tangibles.

Our opinion affirming the lower court is now vacated and annulled and, for the reasons stated, the order of the lower court is reversed in so far as it relates to the securities here involved.

Wilson, C. J.

Dibell, J.: I dissent. Dibell, J.

(Hilton, J., took no part.)

[fol. 92] IN SUPREME COURT OF MINNESOTA

26609

In the Matter of the Inheritance Tax on the Estate of HENRY R. TAYLOR, Deceased

STATE OF MINNESOTA, Appellant,

vs.

MOSES TAYLOR et al., as Executors of the Last Will and Testament of Henry R. Taylor, Deceased, Respondents

JUDGMENT

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the Order of the Court below, herein appealed from, to-wit of the District Court within and for the County of Ramsey be and the same hereby is in all things reversed in so far as it relates to the securities here involved.

And it is further determined and adjudged that Appellant herein, do have and recover of Respondents herein the sum and amount of One Hundred Fifty and No/100 Dollars ($150.00) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed October 13th, A. D. 1928.

By the Court.

Attest:

Grace Kaercher Davis, Clerk.

Statement for Judgment

Statutory costs, $25.00; Printer, $125.00; Clerk, $—; Acknowledgment, $—; Return, $—; Postage and express, $—; Filing Mandate, $—; Transcript, $—; Appeal Bond, $—. Total, $150.00.

[fol. 93] IN SUPREME COURT OF MINNESOTA

[Title omitted]

Petition for Appeal, Assignment of Errors, and Prayer for Reversal

PETITION FOR APPEAL

Considering itself aggrieved by the final decision of the Supreme Court of the State of Minnesota, in the above entitled cause, rendered the 13th day of October, 1928, The Farmers' Loan & Trust Company, as sole surviving executor of the last will and testament of Henry R. Taylor, deceased, appellant herein, hereby prays for the allowance of an appeal to the Supreme Court of the United States from said final judgment, and for an Order fixing the amount of the bond for costs thereon.

Appellant represents that the issues involved in the above entitled cause question the validity of the Inheritance Tax Law of the State of Minnesota (to-wit Sections 2292 to 2321, both inclusive, of the General Statutes of Minnesota for 1923, said sections being Chapter 288 of the Session Laws of Minnesota for 1905 as thereafter amended and modified by the Legislature of the State of Minnesota) insofar as said law is construed to apply to and impose an inheritance tax upon the transfer by devolution of the securities involved in this case (being bonds of the cities of St. Paul and Minneapolis, Minnesota, and bonds and certificates of indebtedness of the State of Minnesota), upon the death of their owner Henry R. Taylor, a resident of the State of New York, all of which securi-[fol. 94] ties were actually held and kept by said Henry R. Taylor in the State of New York for a long time prior to and at the date of his death, upon the ground of its being repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States in that said law, and the authority exercised under it, deprived said appellant of its property without due process of law, and upon the further ground of its being repugnant to Section 10, Article I of the Constitution of the United States, in that it, and the authority exercised under it, impaired the obligation of contract; that the decision of said Minnesota

Supreme Court as set forth in the opinion filed by it in connection with its final judgment rendered October 13, 1928, as aforesaid was in favor of the validity of said statute as so applied, and of the authority exercised under it, and denied the claim of appellant that said statute as so applied, and the authority exercised under it, was repugnant to the Constitution of the United States; and that said cause is one in which, under the legislation in force prior to the adoption of the Act of Congress approved January 31, 1928, as amended by the Act of Congress approved April 26, 1928, a review could have been had in the United States Supreme Court in this case on writ of error under Section 237 of the Judicial Code, as amended, being Section 344 of the United States Code Annotated.

ASSIGNMENT OF ERRORS

And said appellant assigns the following errors in the record and proceedings in said cause:

1. The said Supreme Court of Minnesota erred in holding that the State of Minnesota had any jurisdiction or power, under the Constitution of the United States, to levy or impose a tax upon the transfer by devolution of the securities involved in this case (being bonds of the cities of St. Paul and Minneapolis, Minnesota, and bonds and [fol. 95] certificates indebtedness of the State of Minnesota) upon the death of their owner Henry R. Taylor, a resident of the State of New York, all of which securities were actually held and kept by said Henry R. Taylor in the State of New York for a long time prior to and at the date of his death.

2. The said Supreme Court of Minnesota erred in adjudging and deciding that the Inheritance Tax Law of Minnesota (to-wit, Sections 2292 to 2321, both inclusive, of the General Statutes of Minnesota for 1923, said sections being Chapter 288 of the Session Laws of Minnesota for 1905 as thereafter amended and modified by the Legislature of the State of Minnesota) insofar as the same is construed to apply to and impose an inheritance tax upon the said transfer of said securities as above described, and the authority exercised under said law, are valid and do not deprive appellant of its property without due process of

law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

3. The said Supreme Court erred in adjudging and deciding that said Inheritance Tax Law of Minnesota as so applied, and the authority exercised thereunder, are valid and do not impair the obligation of contract in violation of Section 10 of Article I of the Constitution of the United States.

4. The said Supreme Court of Minnesota erred in reversing the order or judgment of the District Court of Minnesota for the Second Judicial District dated October 14, 1927, and in not giving to the appellant herein its rights under the Constitution of the United States as claimed and set forth in the record in this case.

[fol. 96] PRAYER FOR REVERSAL

For which errors the appellant herein prays that the said final judgment and decision of the Supreme Court of the State of Minnesota, dated September 13, 1928, in this cause, be reversed and a judgment rendered in favor of said appellant and for costs.

Dated December 19th, 1928.

The Farmers' Loan and Trust Company, as Sole Surviving Executor of the Last Will and Testament of Henry R. Taylor, Deceased, by George W. Morgan, Cleon Headley, Cadwalader, Wickersham & Taft, Davis Severance & Morgan, Its Attorneys.

[fol. 97] IN SUPREME COURT OF MINNESOTA

No. 26609

THE FARMERS LOAN AND TRUST COMPANY, as Sole Surviving Executor of the Last Will and Testament of Henry R. Taylor, Deceased, Appellant,

vs.

STATE OF MINNESOTA, Respondent

ORDER ALLOWING APPEAL

The petition of The Farmers Loan and Trust Company, as sole surviving executor of the last will and testament of

Henry R. Taylor, deceased, for the allowance of an appeal to the Supreme Court of the United States from the final judgment entered in the above entitled cause on October 13, 1928, came on to be heard, accompanied by assignments of error and prayer for reversal in due form, and it appearing that said cause was one in which under the legislation in force when the Act of Congress approved January 31, 1928, as amended by the Act of Congress approved April 26, 1928, was passed, a review could have been had in the Supreme Court of the United States on writ of error and the Court upon hearing Davis, Severance & Morgan, attorneys for said petitioner, in support of said petition and having duly considered said matter;

It is hereby ordered that an appeal to the Supreme Court of the United States by said The Farmers Loan and Trust Company, as sole surviving executor of the last will and testament of Henry R. Taylor, deceased, in the above entitled cause, is hereby allowed, upon the filing of a bond, for securing costs to the State of Minnesota in the form presented to this Court in the amount of Five Hundred [fol. 98] ($500.00) Dollars.

And the Clerk of this Court is hereby ordered to transmit under her hand and the seal of this Court to the Supreme Court of the United States a copy of this order and of the proceedings had and taken in this cause so that the same shall be received by said Clerk of the Supreme Court of the United States within thirty days from the date of this order.

Dated this 19 day of December, 1928.

G. B. Wilson, Chief Justice of the Supreme Court of Minnesota.

[fols. 99 & 100] Bond on appeal for $500.00 approved; omitted in printing.

[fol. 101] Citation, in usual form, showing service on G. A. Youngquist, omitted in printing.

[Fol. 102] In Supreme Court of Minnesota

Praecipe for Transcript of Record

To the Clerk of the Supreme Court of Minnesota:

You will please prepare a transcript of the record in this case to be filed in the office of the Clerk of the United States Supreme Court, pursuant to the appeal heretofore allowed herein, and include in said transcript the following portions of the record in said case in your office, namely:

1. Transcript from District Court, Second Judicial District, Ramsey County, Minnesota, consisting of the following: Executors' application to Attorney General of Minnesota for determination of inheritance tax; findings and determination of Attorney General dated August 27, 1926; Executors' notice of appeal from findings and determination to District Court for Ramsey County, Minnesota; settled case including stipulation of facts, exhibits attached thereto and stipulation for hearing appeal; stipulation for settling case; order settling case; findings of fact; conclusions of law and order of District Court dated October 14, 1927; District Court's memorandum opinion; and notice of appeal by State of Minnesota to Supreme Court of Minnesota.

2. State's assignment of errors of District Court.

3. Opinion and syllabus of Minnesota Supreme Court rendered April 13, 1928.

[Fol. 103] 4. State's petition for reargument in Minnesota Supreme Court.

5. Order of Minnesota Supreme Court granting reargument.

6. Opinion and syllabus of Minnesota Supreme Court rendered September 28, 1928.

7. Judgment in Minnesota Supreme Court dated October 13, 1928.

8. Executor's petition for appeal, assignment of errors and prayer for reversal.

9. Order of Minnesota Supreme Court allowing appeal.

10. Bond on appeal.

11. Citation and service.

12. The praecipe and service.

Said transcript to be prepared as required by law and the rules of the Supreme Court of Minnesota and the Supreme Court of the United States.

Dated December 28, 1928.

George W. Morgan, Cleon Headley, Cadwalader, Wickersham & Taft, Davis, Severance & Morgan, Attorneys for Appellant.

We, the attorneys of record for the appellee in the above entitled cause, do acknowledge due service of the above praecipe this 29th day of December, 1928.

G. A. Youngquist, Attorney General of the State of Minnesota; John F. Bonner, Assistant Attorney General of the State of Minnesota, Attorneys for Appellee.

[fol. 104] Certificate of judgment omitted in printing.

[fol. 105] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 106-91] Return to order allowing appeal omitted in printing.

[fol. 92] Note.—The preceding portion of the record in appeal No. 632 is identical with that part of the record in appeal No. 632 commencing from the beginning and continuing to and including page 92 of said original record, whereon appears the judgment of the Supreme Court of Minnesota dated October 15, 1928. It is therefore omitted in printing.

[fol. 93] In District Court of Ramsey County, Second Judicial District

In the Matter of the Inheritance Tax on the Estate of Henry Taylor, Deceased

Order and Judgment Affirming in Part and Directing the Correction, Amendment, and Modification in Part of the Findings and Determination of the Attorney General

This Court heretofore and on or about October 14, 1927, entered herein its findings of fact, conclusions of law and order or judgment correcting, amending and modifying the findings and determination of the Attorney General herein dated August 27, 1926. Thereafter, the State of Minnesota appealed from said order or judgment to the Supreme Court of Minnesota and said Supreme Court of Minnesota on September 28, 1928, filed its opinion herein reversing the said order or judgment of this court "in so far as it relates to the securities here involved." The mandate of the Supreme Court of Minnesota pursuant to its said opinion has now been remitted to and received by this Court.

Upon the findings of fact heretofore filed herein and pursuant to said opinion and mandate of the Supreme Court of Minnesota,

It is hereby ordered, adjudged, and decreed that the findings and determination of the Attorney General dated August 27, 1926, be corrected, amended and modified so as to provide for and make, in the computation of the Minnesota inheritance tax, the same corresponding deduction or allowance for the amount of money paid or to be paid to the [fol. 94] State of New York as a tax upon the transfer of said decedent's property upon his death, as is made by said Attorney General in his computation of the Minnesota tax for the sum paid or to be paid by said estate as a Federal estate tax to the United States.

It is further ordered, adjudged, and decreed, that in all other respects said findings and determination of the Attorney General dated August 27, 1926, be and they are hereby affirmed.

Charles Bechhoeffer, District Judge.

Dated November 14th, 1928.

[fol. 95] IN DISTRICT COURT OF RAMSEY COUNTY

[Title omitted]

NOTICE OF APPEAL

To G. A. Youngquist, Esq., Attorney General of the State of Minnesota, and John F. Bonner, Esq., Asst. Attorney General of the State of Minnesota, and N. C. Robinson, Esq., Clerk of the above-named District Court:

You will please take notice that The Farmers Loan & Trust Company, surviving executor of the last will and testament of Henry R. Taylor, Deceased, appeals to the Supreme Court of the State of Minnesota from all of that part of the order or judgment entered in and by the above-named District Court on November 14, 1928, which affirms in part the Findings and Determination of the Attorney General of Minnesota dated August 27, 1926, appealed from in this proceeding, save and except in so far as said order or judgment of said District Court affirms that part of said Findings and Determination of the Attorney General of Minnesota dated August 27, 1926, which finds and determines that the 528 shares of the capital stock of the Minneapolis, Saint Paul & Sault Ste. Marie Railway Company listed in said Findings and Determination constituted property of the decedent, Henry R. Taylor, within the State of Minnesota and subject to its jurisdiction so as to render [fol. 96] the transfer thereof subject to an inheritance tax under Minnesota laws.

Cadwalader, Wickersham & Taft, Davis, Severance & Morgan, Attorneys for the Farmers Loan & Trust Company, Executor of the Last Will and Testament of Henry R. Taylor, Deceased.

Due service of the within Notice of Appeal is hereby admitted this 4th day of December, 1928.

G. A. Youngquist, Attorney General of the State of Minnesota; John F. Bonner, Asst. Attorney General of the State of Minnesota, Attorneys for the State of Minnesota.

In District Court of Ramsey County

Stipulation for Waiver of Bond

The State of Minnesota hereby waives bond on appeal and agrees that proceedings in the above mentioned cause shall be stayed and all rights affected by said appeal saved with the same force and effect as if costs and supersedeas bond had been duly executed, served and filed by appellant herein as provided by the statutes of the State of Minnesota.

G. A. Youngquist, Attorney General of the State of Minnesota. John F. Bonner, Asst. Attorney General of the State of Minnesota.

Dated December 4, 1928.

[fol. 97] In Supreme Court of Minnesota

1928

In the Matter of the Inheritance Tax on the Estate of Henry R. Taylor, Deceased

The Farmers Loan & Trust Company, as Executor of the Last Will and Testament of Henry R. Taylor, Deceased, Appellant,

vs.

State of Minnesota, Respondent

Assignment of Errors

Errors Assigned by Appellant to the Order or Judgment of the Above-named District Court Dated and Entered November 14, 1928

1. The District Court of Minnesota for Ramsey County, Second Judicial District, erred in affirming, by its order or judgment dated and entered November 14, 1928, that part of the Findings and Determination of the Attorney General of Minnesota dated August 27, 1928, wherein it was found and determined that a transfer or inheritance tax is due the State of Minnesota on account of the transfer by devolution of the bonds of the City of Minneapolis, the

City of St. Paul and the State of Minnesota, and of the certificates of indebtedness of the State of Minnesota listed in said Findings and Determination and which were owned by decedent, Henry R. Taylor, a resident of New York, and were held and kept by him in the State of New York at the time of his death.

The said Court should have ordered and adjudged that said Findings and Determination should be set aside in so far as they find and determine that any transfer or inheritance tax is due the State of Minnesota on account of the [fol. 98] said transfer by devolution of said State and municipal bonds and said State certificates of indebtedness.

2. Said Court erred in holding that said State and Municipal bonds and said State certificates of indebtedness constituted property of said decedent at the date of his death within the State of Minnesota or subject to its jurisdiction or having any situs in Minnesota so as to render the transfer thereof subject to an inheritance tax under Minnesota law.

The Court should have held that said bonds and certificates of indebtedness did not constitute property of said decedent at the date of his death within the State of Minnesota or subject to its jurisdiction or having any situs in Minnesota so as to render the transfer thereof subject to an inheritance tax under Minnesota laws.

3. Said Court erred in holding that the inheritance tax laws of Minnesota include and apply to the said transfer of said State and Municipal bonds and said State certificates of indebtedness.

The Court should have held that the inheritance tax laws of Minnesota do not include and apply to the said transfer of said bonds and certificates of indebtedness.

4. The Court erred in holding that the State of Minnesota has jurisdiction to tax the said transfer of said State and Municipal bonds and said State certificates of indebtedness.

The Court should have held that said State of Minnesota is without jurisdiction to tax the said transfer of said bonds and certificates of indebtedness.

5. Said Court erred in failing to hold that said Findings and Determination and the levy and assessment of a tax

upon the said transfer of said State and Municipal bonds and said State certificates of indebtedness is an attempt to [fol. 99] give to the law under which said Findings and Determination were made an extraterritorial effect in violation of the Constitution of the United States.

The Court should have held that said Findings and Determination and the levy and assessment of such a tax is an attempt to give the law under which said Findings and Determination were made an extraterritorial effect in violation of the Constitution of the United States.

6. Said Court erred in failing to hold that said Findings and Determination and the law under which they were made (Sections 2292 to 2321, both inclusive, of the General Statutes of Minnesota, 1923), as construed by said Court, are invalid and in violation of the provisions of the Constitution of the United States, viz.: Section 1 of the Fourteenth Amendment thereto, that no State shall make or enforce any law which shall abridge the privileges, or immunities of the citizens of the United States, nor shall any state deprive any person of property without due process of law, nor deny to any person, within its jurisdiction, the equal protection of the laws.

The Court should have held that said Findings and Determination, and said law under which they were made as construed by the Court, are invalid under the said provisions of said Fourteenth Amendment to the Constitution of the United States.

7. The Court erred in failing to hold that said Findings and Determination, and the said law under which they were made as construed by said Court, are invalid and in violation of the provisions of the Constitution of the United States, viz.: Section 10 of Article I thereof, that no State shall pass any law impairing the obligations of contracts. [fols. 100 & 100½] The Court should have held that said Findings and Determination, and the said law under which they were made as construed by said Court, are invalid and in violation of said provisions of the Constitution of the United States.

Cadwalader, Wickersham & Taft, Davis, Severance & Morgan, Attorneys for the Farmers Loan & Trust Company, Executor of the Last Will and Testament of Henry R. Taylor, Deceased.

[fol. 101] IN SUPREME COURT OF MINNESOTA

98

[Title omitted]

Ramsey County. Per Curiam

OPINION

Appeal from a final order which is the equivalent of a judgment entered on Nov. 14, 1928, adjudging in substance that the state is entitled to collect an inheritance tax in said estate in relation to municipal bonds issued by the cities of St. Paul and Minneapolis, Minnesota, and also in relation to certificates of indebtedness of the State of Minnesota.

The questions presented are those decided by this court on a former appeal as reported in 175 Minn. 310. Our previous conclusion was based upon the Constitution of the United States and our conception of its construction by the United States Supreme Court. We did not there base our decision upon our own fundamental law but upon the Federal authority and upon authority of our previous conclusion and the Federal Constitution the said final order or judgment from which this appeal is taken is affirmed.

[fol. 102] IN SUPREME COURT OF MINNESOTA

27284

In the Matter of the Inheritance Tax on the Estate of HENRY R. TAYLOR, Deceased

STATE OF MINNESOTA, Respondent,

vs.

MOSES TAYLOR et al., as Executors of the Last Will and Testament of Henry R. Taylor, Deceased, Appellant

JUDGMENT

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that

the Judgment of the Court below, herein appealed from, to-wit, of the District Court within and for the County of Ramsey be and the same hereby is in all things Affirmed.

And it is further determined and adjudged that Respondent herein, do have and recover of Appellants herein the sum and amount of Twenty-five and no/100 Dollars, ($25.00) Final Judgment in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed December 19th, A. D. 1928.

By the Court.

Attest: Grace Kaercher Davis, Clerk. (Supreme Court Seal.)

Statement for Judgment

Statutory Costs,$25.00; Printer,$—; Clerk, $—; Acknowledgments, $—; Returns, $—; Postage and Express, $—; Filing Mandate $—; Transcript, $—; Appeal Bond, $—; Total, $25.00.

[fol. 103] In Supreme Court of Minnesota

[Title omitted]

Petition for Appeal, Assignment of Errors, and Prayer for Reversal

Petition for Appeal

Considering itself aggrieved by the final decision of the Supreme Court of the State of Minnesota, in the above entitled cause, rendered the 19th day of December, 1928, The Farmers' Loan and Trust Company, as sole surviving executor of the last will and testament of Henry R. Taylor, deceased, appellant herein, hereby prays for the allowance of an appeal to the Supreme Court of the United States from said final judgment, and for an Order fixing the amount of the bond for costs thereon.

Appellant represents that the issues involved in the above entitled cause question the validity of the Inheritance Tax Law of the State of Minnesota (to-wit Sections 2292 to 2321, both inclusive, of the General Statutes of Minnesota

for 1923, said sections being Chapter 288 of the Session Laws of Minnesota for 1905 as thereafter amended and modified by the Legislature of the State of Minnesota) insofar as said law is construed to apply to and impose an inheritance tax upon the transfer by devolution of the securities involved in this case (being bonds of the cities of St. Paul, and Minneapolis, Minnesota, and bonds and certificates of indebtedness of the State of Minnesota), upon the death of their owner Henry R. Taylor, a resident of the State of New York, all of which securities were actually held [fol. 104] and kept by said Henry R. Taylor in the State of New York for a long time prior to and at the date of his death, upon the ground of its being repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States in that said law, and the authority exercised under it, deprived said appellant of its property without due process of law, and upon the further ground of its being repugnant to Section 10, Article I of the Constitution of the United States, in that it, and the authority exercised under it, impaired the obligation of contract; that the decision of said Minnesota Supreme Court as set forth in the opinion filed by it in connection with its final judgment rendered December 19, 1928, as aforesaid was in favor of the validity of said statute as so applied, and of the authority exercised under it, and denied the claim of appellant that said statute as so applied, and the authority exercised under it, was repugnant to the Constitution of the United States; and that said cause is one in which, under the legislation in force prior to the adoption of the Act of Congress approved January 31, 1928, as amended by the Act of Congress approved April 26, 1928, a review could have been had in the United States Supreme Court in this case on writ of error under Section 237 of the Judicial Code, as amended, being Section 344 of the United States Code Annotated.

Assignment of Errors

And said appellant assigns the following errors in the record and proceedings in said cause:

1. The said Supreme Court of Minnesota erred in holding that the State of Minnesota had any jurisdiction or power, under the Constitution of the United States, to levy

or impose a tax upon the transfer by devolution of the securities involved in this case (being bonds of the cities of [fol. 105] St. Paul and Minneapolis, Minnesota, and bonds and certificates of indebtedness of the State of Minnesota) upon the death of their owner Henry R. Taylor, a resident of the State of New York, all of which securities were actually held and kept by said Henry R. Taylor in the State of New York for a long time prior to and at the date of his death.

2. The said Supreme Court of Minnesota erred in adjudging and deciding that the Inheritance Tax Law of Minnesota (to-wit, Section 2292 to 2321, both inclusive, of the General Statutes of Minnesota for 1923, said sections being Chapter 288 of the Session Laws of Minnesota for 1905 as thereafter amended and modified by the Legislature of the State of Minnesota) insofar as the same is construed to apply to and impose an inheritance tax upon the said transfer of said securities as above described, and the authority exercised under said law, are valid and do not deprive appellant of its property without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

3. The said Supreme Court erred in adjudging and deciding that said Inheritance Tax Law of Minnesota as so applied, and the authority exercised thereunder, are valid and do not impair the obligation of contract in violation of Section 10 of Article I of the Constitution of the United States.

4. The said Supreme Court of Minnesota erred in affirming the order or judgment of the District Court of Minnesota for the Second Judicial District dated November 14, 1928, and in not giving to the appellant herein its rights under the Constitution of the United States as claimed and set forth in the record in this case.

[fol. 106] PRAYER FOR REVERSAL

For which error the appellant herein prays that the said final judgment and decision of the Supreme Court of the State of Minnesota, dated December 19, 1928, in this cause,

be reversed and a judgment rendered in favor of said appellant and for costs.

Dated December 19th, 1928.

The Farmers Loan and Trust Company, as Sole Surviving Executor of the last Will and Testament of Henry R. Taylor, Deceased, by George W. Morgan, Cleon Headley, Cadwalader, Wickersham & Taft, Davis, Severance & Morgan, Its Attorneys.

[fol. 107] IN SUPREME COURT OF MINNESOTA

No. 27284

THE FARMERS LOAN AND TRUST COMPANY, AS SOLE SURVIVING Executor of the Last Will and Testament of Henry R. Taylor, Deceased, Appellant,

vs.

STATE OF MINNESOTA, Respondent

ORDER ALLOWING APPEAL

The petition of The Farmers Loan and Trust Company, as sole surviving executor of the last will and testament of Henry R. Taylor, deceased, for the allowance of an appeal to the Supreme Court of the United States from the final judgment entered in the above entitled cause on December 19, 1928, came on to be heard, accompanied by assignments of error and prayer for reversal in due form, and it appearing that said cause was one in which under the legislation in force when the Act of Congress approved January 31, 1928, as amended by the Act of Congress approved April 26, 1928, was passed, a review could have been had in the Supreme Court of the United States on writ of error and the Court upon hearing Davis, Severance & Morgan, attorneys for said petitioner, in support of said petition and having duly considered said matter;

It is hereby ordered that an appeal to the Supreme Court of the United States by said The Farmers Loan and Trust Company, as sole surviving executor of the last will and testament of Henry R. Taylor, deceased, in the above en-

titled cause, is hereby allowed, upon the filing of a bond, for securing costs to the State of Minnesota in the form presented to this Court in the amount of Five Hundred ($500.00) Dollars.

[fol. 108] And the Clerk of this Court is hereby ordered to transmit under her hand and the seal of this Court to the Supreme Court of the United States a copy of this order and of the proceedings had and taken in this cause so that the same shall be received by said Clerk of the Supreme Court of the United States within thirty days from the date of this order.

Dated this 19th day of December, 1928.

S. B. Wilson, Chief Justice of the Supreme Court of Minnesota.

[fols. 109-110] Bond on appeal for $500.00 approved; omitted in printing.

[fol. 111] Citation, in usual form, showing service on G. A. Youngquist, omitted in printing.

[fol. 112] In Supreme Court of Minnesota

[Title omitted]

Præcipe for Transcript of Record

To the Clerk of the Supreme Court of Minnesota:

You will please prepare a transcript of the record in this case to be filed in the office of the Clerk of the United States Supreme Court, pursuant to the appeal heretofore allowed herein, and include in said transcript the following portions of the record in said case in your office, namely:

1. Transcript from District Court, Second Judicial District, Ramsey County, Minnesota, consisting of the following: Executors' application to Attorney General of Minnesota for determination of inheritance tax; findings

and determination of Attorney General dated August 27, 1926; Executors' notice of appeal from findings and determination to District Court for Ramsey County, Minnesota; settled case including stipulation of facts, exhibits attached thereto and stipulation for hearing appeal; stipulation for settling case; order settling case; findings of fact, conclusions of law and order of District Court dated October 16, 1927; District Court's memorandum opinion; and notice of appeal by State of Minnesota to Supreme Court of Minnesota.

2. State's assignment of errors of District Court.

3. Opinion and syllabus of Minnesota Supreme Court rendered April 13, 1928.

[fol. 112] 4. State's petition for reargument in Minnesota Supreme Court.

5. Order of Minnesota Supreme Court granting reargument.

6. Opinion and syllabus of Minnesota Supreme Court rendered September 28, 1928.

7. Judgment in Minnesota Supreme Court dated October 13, 1928.

8. Minnesota Supreme Court's mandate to District Court.

9. Order and Judgment of District Court dated November 14, 1928.

10. Executor's Notice of Appeal to Supreme Court of Minnesota.

11. Executor's assignment of errors of District Court.

12. Opinion of Minnesota Supreme Court rendered December 14, 1928.

13. Judgment in Minnesota Supreme Court dated December 19, 1928.

14. Executor's petition for appeal, assignment of errors and prayer for reversal.

15. Order of Minnesota Supreme Court allowing appeal.

16. Bond on appeal.

17. Citation and service.

18. This praecipe and service.

Said transcript to be prepared as required by law and the rules of the Supreme Court of Minnesota and the Su-
[Rel. 124] preme Court of the United States.

Dated December 28, 1920.

George W. Morgan, Chas Handley, Cadwalader, Wickersham & Taft, Davis, Severance & Morgan, *Attorneys for Appellant.*

We, the attorneys of record for the appellee in the above entitled cause, do acknowledge due service of the above praecipe this 29th day of December, 1920.

C. A. Youngquist, *Attorney General of the State of Minnesota; John F. Bonner, Assistant Attorney General of the State of Minnesota, Attorneys for Appellee.*

[Rel. 124] Certificate of lodgment omitted in printing.

[Rel. 124] Clerk's certificate to foregoing transcript omitted in printing.

[Rel. 127] Return to order allowing appeal omitted in printing.

[Fol. 116] In Supreme Court of the United States, October Term, 1928

Nos. 632 and 633

The Fidelity Loan & Trust Company, as Sole Surviving Executor of the Last Will and Testament of Henry R. Taylor, Deceased, Appellant,

vs.

State of Minnesota, Appellee

Statement of Points on Which Appellant Intends to Rely and Designation of Parts of the Record Deemed Necessary for the Consideration Thereof—Filed Feb. 2, 1929

Appellant being advised that in view of the fact that these two appeals are in the same case it is permissible to have the records of both printed under one cover, this single statement is made for both appeals numbered 632 and 633, October Term 1928.

The appellant herein intends to rely upon the following points in the two appeals taken in this case:

1. The State of Minnesota had no jurisdiction or power under the Constitution of the United States to levy or impose a tax upon the transfer by devolution of the securities involved in this case (being bonds of the Cities of St. Paul and Minneapolis, Minnesota, and bonds and certificates of indebtedness of the State of Minnesota) upon the death of their owner, Henry R. Taylor, a resident of the State of New York, all of which securities were actually held and kept by said Henry R. Taylor in the State of New York for [Fol. 117] a long time prior to and at the date of his death.

2. The inheritance tax law of Minnesota (to-wit), Sections 2282 to 2321, both inclusive, of the General Statutes of Minnesota for 1923, said sections being Chapter 288 of the Session Laws of Minnesota for 1905 as thereafter amended and modified by the Legislature of the State of Minnesota) in so far as the same is construed to apply to and impose an inheritance tax upon the said transfer of

said securities as above described, and the authority exercised under said law, are invalid and deprive appellant of its property without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

3. The said inheritance tax law of Minnesota as so applied, and the authority exercised thereunder, are invalid and impair the obligation of contract in violation of Section 10 of Article 1 of the Constitution of the United States.

4. The Supreme Court of Minnesota erred in reversing the order or judgment of the District Court of Minnesota for the Second Judicial District, dated October 14, 1927, and in not giving to appellant its rights under the Constitution of the United States as claimed and set forth in the record in this case.

5. The Supreme Court of Minnesota erred in affirming the order or judgment of the District Court of Minnesota for the Second Judicial District, dated November 14, 1928, and in not giving to the appellant herein its rights under [fol. 120] the Constitution of the United States as claimed and set forth in the record in this case.

Appellant designates the following parts of the records in these two appeals as those which it thinks necessary for the consideration of the above mentioned points:

1. All of the record in appeal No. 632 (except repetition of titles) as transmitted by the Clerk of the Supreme Court of Minnesota to the Clerk of the United States Supreme Court.

2. All of the record in appeal No. 633 (except repetition of titles) as transmitted by the Clerk of the Supreme Court of Minnesota to the Clerk of the United States Supreme Court.

However, if the records in said two appeals are printed under one cover, then appellant requests that all of said record in appeal No. 632 be printed in full and that all of that part of the record in appeal No. 633 commencing with page 93 of said original record whereon appears an order and judgment of the District Court for Ramsey County, and

continuing to the end of said record, be printed with a notation in substantially the following form:

"The preceding portion of the record in appeal No. 633 is identical with that part of the record in appeal No. 632 commencing from the beginning and continuing to and including page 92 of said original record whereon appears the judgment of the Supreme Court of Minnesota dated October 13, 1928."

George W. Morgan, Cleon Headley, Attorneys for Appellant.

Dated January 30, 1929.

[fols. 121 & 122] We, the attorneys of record for the appellee in the above entitled cases, acknowledge due service of the above Statement and Designation this 31st day of January, 1929; and we do stipulate and agree that the records in said appeals Nos. 632 and 633 may be printed in the manner requested in the within Statement and Designation.

G. A. Youngquist, Attorney General of the State of Minnesota; John F. Bonner, Assistant Attorney General of the State of Minnesota, Attorneys for Appellee.

[fol. 123] [File endorsement omitted.]

Endorsed on cover: File No. 33,941. Minnesota Supreme Court. Term No. 632. The Farmers Loan and Trust Company, as sole surviving executor of the last will and testament of Henry R. Taylor, deceased, appellant, vs. The State of Minnesota. File No. 33,942. Term No. 633. The Farmers Loan and Trust Company, as sole surviving executor of the last will and testament of Henry R. Taylor, deceased, appellant, vs. The State of Minnesota. Filed January 18, 1929, 19—. File No. 33,941, 33,942.

FILE COPY

Office Supreme Court
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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

Nos. [redacted] and [redacted]
26

THE FARMERS LOAN and TRUST COMPANY, as sole surviving executor of the last will and testament of HENRY R. TAYLOR, deceased,

Appellant,

vs.

STATE OF MINNESOTA,

Appellee.

STATEMENT SHOWING BASIS OF JURISDICTION AS REQUIRED BY RULE 12.

GEORGE W. MORGAN,
CLEON HEADLEY,
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1512 Merchants Nat'l. Bank Bldg.,
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DAVIS, SEVERANCE & MORGAN,
CADWALADER, WICKERSHAM & TAFT,
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

Nos. 632 and 633.

THE FARMERS LOAN and TRUST COMPANY, as sole surviving executor of the last will and testament of HENRY R. TAYLOR, deceased,

Appellant,

vs.

STATE OF MINNESOTA,

Appellee.

STATEMENT SHOWING BASIS OF JURISDICTION AS REQUIRED BY RULE 12.

To The Honorable The Chief Justice and Associate Justices of the Supreme Court of the United States:

Appellant in support of the jurisdiction of this Court to review the above entitled cause on appeal respectfully represents:

These two appeals are in the same case and present the same questions for review. In the cause docketed as No. 632 an appeal was taken from a judgment of the Supreme Court of Minnesota entered October 13, 1928, which reversed in part an order or judgment of the District Court for Ramsey County, Minnesota. After the entry of said judgment of October 13, 1928, the remittitur went down to said District Court, which entered a new order or judgment in conformity with the decision of the Minnesota Supreme Court and an appeal was thereupon duly taken by appellant herein to the Minnesota Supreme Court from this new order or judgment. On December 19, 1928, the Supreme Court of Minnesota entered its judgment affirming the second order or judgment of said District Court, and the cause docketed as No. 633 is an appeal from the judgment of December 19, 1928. Appellant being in some doubt as to which of the two said judgments of the Minnesota Supreme Court is the final judgment (though appellant believes the judgment of December 19, 1928, to be such), and out of caution, has appealed from each of these judgments.

(a) STATUTORY PROVISION SUSTAINING THE JURISDICTION OF THIS COURT.

These appeals are taken under Sections 861a and 861b of Title 28 of the United States Code, as amended April 26, 1928, and under Rule 46 of the Rules of this Court effective July 1, 1928. Under the old practice writs of error would have been issued under Section 237 of the Judicial Code as amended, being Section 344, Title 28 of the United States Code.

(b) DATES OF JUDGMENTS SOUGHT TO BE REVIEWED AND ON WHICH APPLICATIONS FOR APPEALS WERE PRESENTED.

In Cause No. 632 the judgment of the Minnesota Supreme Court was entered on October 13, 1928, (No. 632, R. page 92)* and the application for appeal therefrom was presented, the order allowing the appeal entered, and the citation issued and served on December 19, 1928, (No. 632, R. pages 93, 97 and 101).

In cause No. 633 the judgment of the Minnesota Supreme Court was entered on December 19, 1928, (No. 633, R. page 102) and the application for appeal therefrom was presented, the order allowing the appeal entered, and the citation issued and served on December 19, 1928, (No. 633, R. pages 103, 107 and 111).

(c) NATURE OF CASE AND RULINGS OF THE MINNESOTA SUPREME COURT.

Appellant is the sole surviving executor of the last will and testament of Henry R. Taylor, who died a resident of New York on December 4, 1925. At the date of his death and for a long time prior thereto, Mr. Taylor owned, held and kept in New York certain bonds of the State of Minnesota and of the cities of St. Paul and Minneapolis, Minnesota, and certain certificates of indebtedness of the State of Minnesota. A part of these securities were registered in the name of the owner, the remaining were payable to bearer (both records, page 13 et seq.) The question presented by these appeals is whether

*Note: The records, which it is stipulated may be combined in one printed record, have not yet been printed. All references herein to the records are therefore to the pages of the original records as prepared by the Clerk of the Minnesota Supreme Court.

Minnesota can, without violating the Constitution of the United States, particularly the provisions of Section 1 of the Fourteenth Amendment thereto and Section 10 of Article I thereof, impose an inheritance tax upon the transfer of these securities by devolution at Mr. Taylor's death.

The provisions for the imposition and the determination of inheritance taxes in Minnesota are found in Sections 2292 to 2321 of the General Statutes of Minnesota for 1923. Section 2292 provides that "a tax shall be and is hereby imposed upon the transfer of property, real, personal or mixed, or any interest therein, * * * when a transfer is by will or intestate law, of property within the state or within its jurisdiction and the decedent was a nonresident of the state at the time of his death." Section 2293 specifies the amount of such taxes. Section 2297 provides that "Every tax imposed by this act shall be a lien upon the property embraced in any inheritance, devise, bequest, legacy or gift until paid, and the person to whom such property is transferred and the administrators, executors and trustees of every estate embracing such property shall be personally liable for such tax, until its payment to the extent of the value of such property." Section 2302 specifies the method of determining the inheritance tax in the case of a nonresident who dies owning personal property in Minnesota. It is there provided as follows:

> "If any nonresident of this state dies owning personal property in this state, such property may be transferred or assigned by the personal representative of, or trustee for the decedent, only after such representative or trustee shall have procured a certificate from the attorney general consenting to the transfer of such property. Such consent shall be issued by the attorney general only in case there is no tax due hereunder; or in case there is a tax, when the same shall have been paid."

It is further provided that any personal representative of a nonresident decedent desiring to transfer property having its situs in Minnesota may make application to the Attorney General for the determination of whether there is any tax due to the state on account of the transfer of the decedent's property and that such applicant shall furnish the Attorney General with certain information. It is then provided:

> "From the information so furnished to him and such other information as he may have with reference thereto, the attorney general shall, with reasonable expedition, determine the amount of tax, if any, due to the state under the provisions of this act and notify the person making the application of the amount thereof claimed to be due. On payment of the tax as determined to be due or in case there be no tax due to the state, the attorney general shall issue a consent to the transfer of the property as owned by the decedent."

It is further provided that any person feeling aggrieved by the determination of the Attorney General may appeal to the District Court of Hennepin County or Ramsey County, Minnesota, "by filing with the Attorney General a notice in writing setting forth his objections to such determination and that he appeals therefrom" and thereupon the court to which the appeal is taken acquires jurisdiction of the proceeding. Upon hearing "the said court may determine any and all questions of law and fact necessary to the enforcement of the provisions of this act according to its intent and purpose, and may by order direct the correction, annulment or modification of any determination made by the attorney general." Finally it is provided as follows:

> "The attorney general and any person aggrieved by the order of the district court may appeal to the supreme court from any such order made by said court, within

the time and in the manner now provided by law for the taking of appeals from orders in civil actions."

The Minnesota statutes prescribe no other procedure than the above for determining the inheritance taxes due in the case of the transfer by will of personal property owned by a nonresident. It is manifest that when all the steps above mentioned shall have been taken and a judgment of the Supreme Court of Minnesota entered, that judgment is a final judgment. It judicially establishes the lien upon the property and fixes with finality the rights and obligations of the parties.

In the present case the executors of Mr. Taylor's will made application to the Attorney General of Minnesota for a determination of the inheritance tax due that state (both records, pages 1-7). The Attorney General found and determined a tax to be due upon the transfer of the securities here involved (both records, pages 8-11). Thereupon the executors appealed to the District Court of Ramsey County, stating as grounds for their appeal that the findings and determination of the Attorney General violated Section 1 of the Fourteenth Amendment to and Section 10 of Article I of the Constitution of the United States (both records, pages 12-14). The appeal was heard upon a stipulation of facts (both records, pages 15-61). The District Court found that the findings and determination of the Attorney General and the action of the State of Minnesota in attempting to impose an inheritance tax upon the transfer of the securities here involved were in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States and ordered that the findings and determination be corrected, amended and modified in this respect (both records, pages 64-67). From the order or judgment of the District Court the State of Minnesota appealed to the Min-

nesota Supreme Court (both records, page 78). After argument the Minnesota Supreme Court affirmed the order of the District Court upon the following ground (219 N. W. 153, 154): "If we construe the law imposing the inheritance tax as operative upon or applicable to the property here involved, we are of the opinion that it would be in violation of the Fourteenth Amendment to the United States Constitution" (both records, pages 82-86). Within a few days after the rendition of this opinion the United States Supreme Court rendered its decision in the case of *Blodgett v. Silberman*, 48 Sup. Ct. Rep. 410. The Attorney General thereupon petitioned for a reargument (both records, pages 87-88), which petition was granted (both records, page 89). After reargument the Minnesota Supreme Court reversed the order of the District Court in so far as that order determined that no inheritance tax could be imposed upon the transfer of the securities here in question, feeling constrained to do so because the United States Supreme Court had held in the *Silberman case* that the United States bonds and treasury certificates there involved were so far intangible property that their transfer by devolution could be taxed by the state of the domicile of their owner, though the securities themselves were held in another state. The Minnesota Supreme Court said (221 N. W. 64, 65):

> "It is our aim to follow the decisions of the Supreme Court of the United States, since we are construing a provision of the Federal Constitution, although our own state constitution contains a similar provision. The opinion in the Silberman case is not necessarily inconsistent with the result we reached in this case because the domicile of the decedent may be a controlling element. But, in view of our previous holdings, it seems that we must logically reach an opposite conclusion from the fact that these securities are intangibles and not tangibles" (both records, pages 90-91).

Accordingly a judgment of reversal was entered by the Minnesota Supreme Court on October 13, 1928, from which an appeal was taken to this Court on December 19, 1928, as above stated.

After the entry of the judgment of October 13, 1928, the remittitur of the Minnesota Supreme Court went down to the District Court and that Court entered a new order or judgment in conformity with the decision of the State Supreme Court (No. 633, R. pages 93-94). The surviving executor appealed to the Minnesota Supreme Court from this second order or judgment of the District Court (No. 633, R. pages 95-96) and assigned as error that the District Court failed to hold that the findings and determination of the Attorney General, and the law under which they were made as construed by said Court, are invalid and in violation of Section 1 of the Fourteenth Amendment to the United States Constitution and of Section 10, Article I of said Constitution (No. 633, R. pages 97-100). Thereupon the State Supreme Court rendered its opinion affirming the order or judgment of the District Court, saying (222 N. W. 528):

> "The questions presented are those decided by this Court on a former appeal as reported in 175 Minn. 310, 219 N. W. 153, on reargument, 221 N. W. 64. Our previous conclusion was based upon the Constitution of the United States and our conception of its construction by the United States Supreme Court. We did not there base our decision upon our own fundamental law but upon the Federal authority, and upon authority of our previous conclusion and the Federal Constitution the said final order or judgment from which this appeal is taken is affirmed" (No. 633, R. page 101).

Upon this decision the Minnesota Supreme Court entered its judgment of affirmance on December 19, 1928, and on the

same date an appeal was taken from that judgment to this Court (No. 633, R. 102).

Thus the Federal questions presented by the assignments of error in the two appeals now before this Court, namely, whether the inheritance tax law of Minnesota, in so far as the same is construed to apply to and impose an inheritance tax upon the transfer of the securities here in question, and the authority exercised under said law, are invalid and deprive appellant of its property without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States and impair the obligation of contracts in violation of Section 10 of Article I of said Constitution, were raised at the commencement of this proceeding, were presented upon appeal and were passed upon by the Supreme Court of Minnesota. The decisions of the Minnesota Supreme Court filed September 28, 1928 (both records, pages 90-91) and December 14, 1928 (No. 633, R. page 101), and the judgments entered thereon were in favor of the validity of the inheritance tax statute of Minnesota as so construed and applied by said Court and denied the claims of appellant that said statute was repugnant to the Constitution of the United States in the respects above mentioned.

(d) CASES SUSTAINING THE JURISDICTION.

Blackstone v. Miller, 188 U. S. 189;
Buck v. Beach, 206 U. S. 392;
Frick v. Pennsylvania, 268 U. S. 473;
Rhode Island Trust Company v. Doughton, 270 U. S. 69.

In each of these cases this Court has assumed jurisdiction on a writ of error to the state court under the former procedure, to determine whether a state inheritance tax law as con-

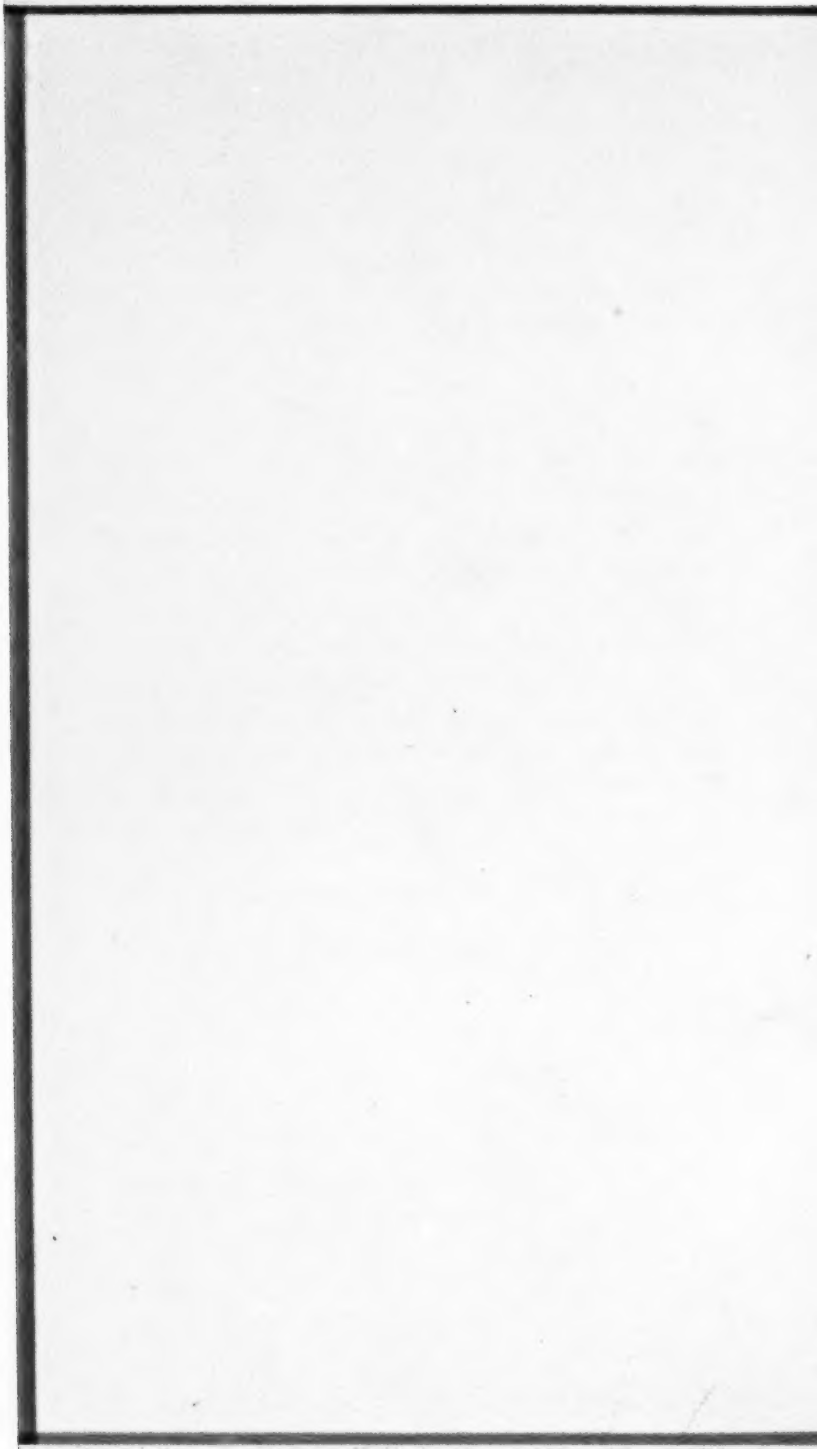
strued and applied by the highest court of the state is valid under the Constitution of the United States, and particularly the Fourteenth amendment thereto. These cases are therefore authorities sustaining the jurisdiction of this Court in the present case.

This Court, so far as we can ascertain, has never passed upon the questions now presented. The case of *Blodgett v. Silberman,* 48 Sup. Ct. Rep. 410, dealt with the power of the state of the domicile of a decedent to impose a tax upon the transfer by will of United States bonds and treasury certificates and bank notes owned by the decedent but kept in another state. Our case presents the question of the power of a state to impose a tax upon the transfer by will of its own bonds and those of its municipalities when the bonds themselves are outside the state and their owner is a nonresident at the date of his death. This question was expressly left open in the *Silberman* decision.

Respectfully submitted,

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DAVIS, SEVERANCE & MORGAN,
CADWALADER, WICKERSHAM & TAFT,
Of Counsel.



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JUL 8 19
CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. [redacted] 264

THE FARMERS LOAN AND TRUST COMPANY, as sole surviving executor of the last will and testament of HENRY R. TAYLOR, deceased,

Appellant,

vs.

STATE OF MINNESOTA,

Appellee.

Appeal from the Supreme Court of the State of Minnesota.

BRIEF ON BEHALF OF APPELLANT.

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KELLOGG, MORGAN, CHASE, CARTER & HEADLEY,

CADWALADER, WICKERSHAM & TAFT,
Of Counsel.

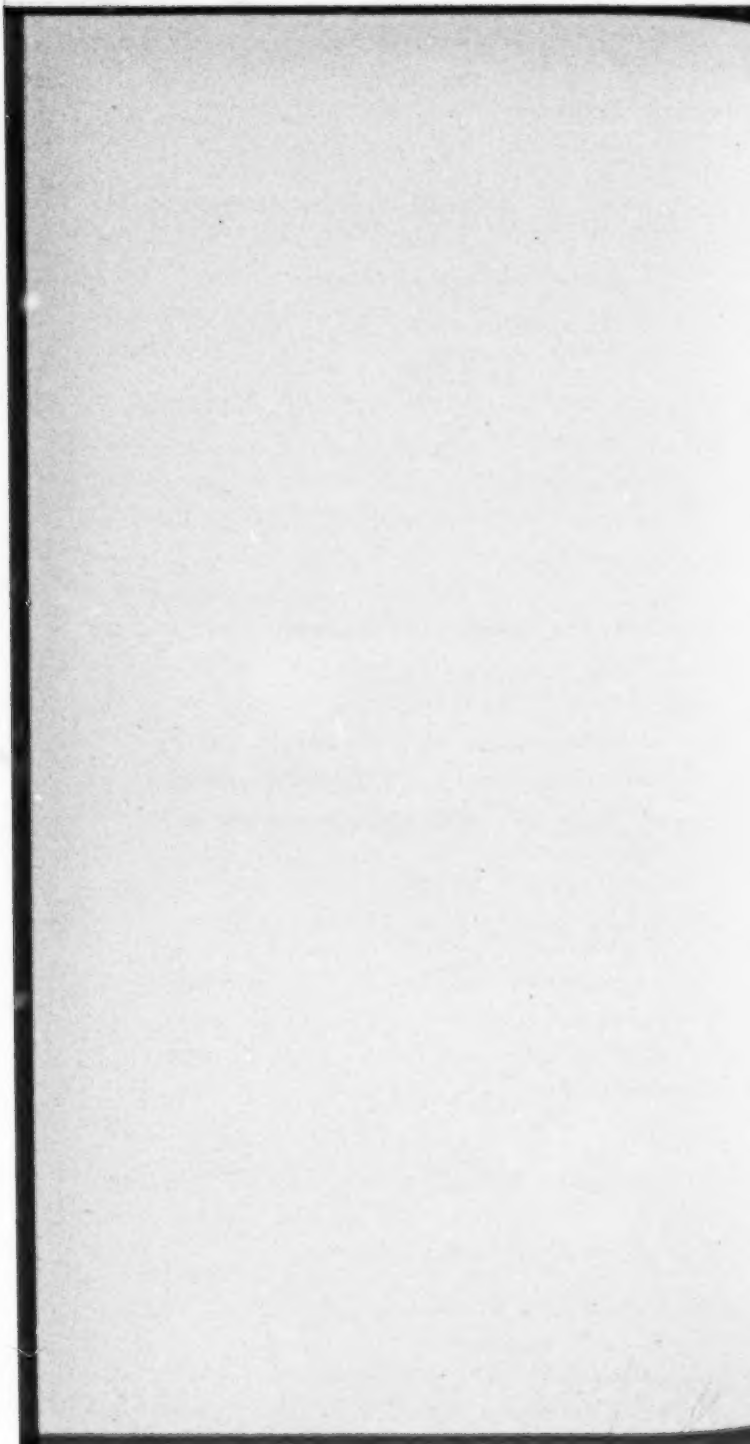


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IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 633.

THE FARMERS LOAN AND TRUST COMPANY, as sole surviving executor of the last will and testament of HENRY R. TAYLOR, deceased,

Appellant,

vs.

STATE OF MINNESOTA,

Appellee.

Appeal from the Supreme Court of the State of Minnesota.

BRIEF ON BEHALF OF APPELLANT.

I.

OFFICIAL REPORTS OF OPINIONS OF THE SUPREME COURT OF MINNESOTA.

(a) Original opinion on first appeal, rendered April 13, 1928: *State v. Taylor, et al.*, 175 Minn. 310, 219 N.W. (Minn.) 153.

(b) Opinion on re-argument, rendered September 28, 1928: *State v. Taylor, et al.,* 175 Minn. 314, 221 N. W. (Minn.) 64.

(c) Opinion on second appeal, rendered December 14, 1928: *In the Matter of the Inheritance Tax on the Estate of Henry R. Taylor, Deceased,* .... Minn. .... 222 N.W. (Minn.) 528.

II.

GROUNDS FOR JURISDICTION.

For the grounds showing the basis of this Court's jurisdiction, reference is made to appellant's statement heretofore filed as required by Rule 12 of the Rules of this Court.

III.

STATEMENT OF CASE.

This appeal is from a final judgment of the Supreme Court of Minnesota (R. 69).

Appellant, a New York corporation, is the sole surviving executor of the last will of Henry R. Taylor, the co-executor having died since this case was commenced in the State courts. Mr. Taylor died testate a resident of New York on December 4, 1925 (R. 11). His will was probated and estate administered in the State of New York (R. 11). At the date of his death and for a long time prior thereto, he owned, held and kept in New York certain bonds and certificates of indebtedness of the State of Minnesota and certain bonds of the Cities of St. Paul and Minneapolis, Minnesota (R. 11,12). The place where the securities were kept and the domicile of their owner at his death, therefore, coincided.

The State of New York has imposed an inheritance tax upon the transfer of these bonds and certificates of indebtedness (R. 13, 14).

In the stipulation of facts upon which this case was tried, the several securities were divided into eight groups and described (R. 11-13, 15-36). The securities comprising groups A, B, C, and G, were registered (R. 15-23, 30-32); the remaining were payable to bearer (R. 23-29, 32-36). By the terms of each of these bonds and certificates of indebtedness both principal and interest thereof are payable at the financial or fiscal agencies of the respective debtors in New York City. Such principal and interest is payable *only* in New York in the case of the bonds included in groups B and C (R. 19, 21); payable in New York or Minnesota, at the option of the payee, in the case of the bonds and certificates of indebtedness included in groups A, D, E, G, and H (R. 15, 24, 26, 30, 33); and payable in either New York or Minnesota in the case of the bonds included in group F, with no mention of any option in the payee (R. 28). Each of the bond debtors maintained, prior to and on December 4, 1925, a financial or fiscal agency in New York City, as referred to in the several bonds and certificates (R. 13).

The State of Minnesota has by its inheritance tax law, (Sections 2292-2321, General Statutes of Minnesota 1923)* as construed and applied by the proper State officials, imposed an inheritance tax upon the transfer of these securities by the

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*The pertinent part, for present purposes, of the Minnesota inheritance tax law reads as follows:

"A tax shall be and is hereby imposed upon the transfer of property, real, personal or mixed * * * to any person or corporation * * * in the following cases:

* * * * *

(2) When a transfer is by will or intestate law, of property within the state or within its jurisdiction and decedent was a non-resident of the State at the time of his death" (§ 2292 G. S. Minn. 1923).

will of Mr. Taylor (R. 5-9). The Supreme Court of Minnesota, by its final judgment, has affirmed such construction and application of the inheritance tax law, and the imposition of the tax (R. 69-70). For a complete statement of the steps and proceedings leading to the said final judgment of the Minnesota Supreme Court, reference is made to appellant's statement filed herein pursuant to Rule 12 of the Rules of this Court.

IV.

SPECIFICATION OF ASSIGNED ERRORS RELIED UPON.

1. The said Supreme Court of Minnesota erred in holding that the State of Minnesota had any jurisdiction or power, under the Constitution of the United States, to levy or impose a tax upon the transfer by devolution of the securities involved in this case (being bonds of the cities of St. Paul and Minneapolis, Minnesota, and bonds and certificates of indebtedness of the State of Minnesota) upon the death of their owner Henry R. Taylor, a resident of the State of New York, all of which securities were actually held and kept by said Henry R. Taylor in the State of New York for a long time prior to and at the date of his death (R. 71).

2. The said Supreme Court of Minnesota erred in adjudging and deciding that the Inheritance Tax Law of Minnesota (to-wit: Sections 2292 to 2321, both inclusive, of the General Statutes of Minnesota for 1923, said sections being Chapter 288 of the Session Laws of Minnesota for 1905 as thereafter amended and modified by the Legislature of the State of Minnesota) insofar as the same is construed to apply to and im-

pose an inheritance tax upon the said transfer of said securities as above described, and the authority exercised under said law, are valid and do not deprive appellant of its property without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States (R. 72).

4. The said Supreme Court of Minnesota erred in affirming the order or judgment of the District Court of Minnesota for the Second Judicial District dated November 14, 1928, and in not giving to the appellant herein its rights under the Constitution of the United States as claimed and set forth in the record in this case (R. 72).

V.

ARGUMENT.

The single question presented for review is:

> Can the State of Minnesota, without violating the Fourteenth Amendment to the United States Constitution, tax the transfer by will of its own bonds and those of its municipalities, when such bonds were physically without the state and owned by a non-resident at the date of his death?

It is proper to note at the outset that this question was not decided in *Blodgett v. Silberman*, 277 U. S. 1, but was carefully left open by this Court in its opinion in that case.

(A) *State and municipal bonds are so far tangible that the State of the debtor may not tax their transfer by devolution when such bonds are owned by a nonresident at his death and kept outside of the State.*

State and municipal bonds, probably because of the high security behind them, have come to be regarded in the business word as a species of tangible property. They are bought, sold, guarded, given as security, levied on in execution, and taxed as chattels. They are not regarded in the practical world as mere evidences of indebtedness but as things of value themselves.

Partly because of this business usage and partly because of a time-honored tradition this Court has from early times and frequently recognized this class of securities, together with bank notes (and sometimes bonds generally), as tangible property for many, including taxation, purposes.

Thus in *State Tax on Foreign Held Bonds*, 15 Wall. 300, this Court said (p. 323):

> "It is undoubtedly true that the actual *situs* of personal property which has a visible and tangible existence, and not the domicile of its owner, will, in many cases, determine the State in which it may be taxed. The same thing is true of public securities consisting of State bonds and bonds of municipal bodies, and circulating notes of banking institutions; *the former, by general usage, have acquired the character of, and are treated as, property in the place where they are found, though removed from the domicile of the owner; the latter are treated and pass as money wherever they are.*" (Italics ours.)

In *New Orleans v. Stempel*, 175 U. S. 309, this Court said (p. 322):

> "It is well settled that bank bills and municipal bonds are in such a concrete tangible form that they are subject to taxation where found, irrespective of the domicile of the owner; are subject to levy and sale on execution, and to seizure and delivery under replevin. * * *."

and called attention to the fact that notes and mortgages may not have become so generally recognized "as tangible personal property."

The same recognition of the tangibility of bonds, often with particular reference to State and Municipal bonds, is given in

Blackstone v. Miller, 188 U. S. 189, 206;

Buck v. Beach, 206 U. S. 392, 407;

Wheeler v. Sohmer, 233 U. S. 434, 439, 445;

De Ganay v. Lederer, 250 U. S. 376, 381;

Maguire v. Trefry, 253 U. S. 12, 15.

Appellant does not claim that State and municipal bonds are necessarily to be *completely* assimilated to tangible per-

sonal property for every purpose; but it does assert that they are so far tangible that if they and their transfer by devolution are taxable anywhere else than at the domicile of their owner, it is *only* at the place where such bonds actually are. This we understand from its decisions is the view of this Court.

In *State Tax on Foreign Held Bonds, supra,* a Pennsylvania law requiring a railroad company which issued bonds to pay a state tax upon those bonds (or perhaps upon the interest therefrom) and to deduct such tax from the interest due was declared unconstitutional when applied to bonds owned by non-residents and kept outside the State, *upon the distinct ground that the tax law was an attempt by Pennsylvania to reach property beyond its jurisdiction.* This Court said (p. 325):

> "We are clear that the tax cannot be sustained; *that the bonds being held by nonresidents of the State, are only property in their hands, and that they are thus beyond the jurisdiction of the taxing power of the State*". (Italics ours.)

A fortiori the same holding would have been made with respect to state and municipal bonds similarly held, for the Court had just referred to the peculiarly tangible character of such securities (p. 324).

It is quite true that this Court in the *Foreign Held Bonds* case also found that the law impaired the obligation of contracts, but that holding, as we read the decision, was only with respect to the statutory provision for the retention of interest by the bond debtor to pay the tax. In the two cases decided with and at the same time as the *Foreign Held Bonds* case and briefly reported in 15 Wall. 326-329, the tax was "upon the bonds * * * to be paid out of the interest," but, unlike

the situation in the *Foreign Held Bonds* case itself, the tax law was passed before the bonds were issued. In these two cases, therefore, the question of the impairment of the obligation of contract was not present at all. Yet this Court held that tax law unconstitutional upon the authority of the *Foreign Held Bonds* case, stating that "the difference in the mode of assessment of the tax did not affect the principle decided." So we assert that the *Foreign Held Bonds* case did decide unequivocally that a state is without power to tax bonds of its corporations when they are owned by a nonresident and kept outside the state, *for the reason that they are property without that state's jurisdiction.*

It is for this last proposition that the case has been cited and approved by this Court. In *New Orleans v. Stempel, supra*, this Court said (p. 319):

> "In *State Tax on Foreign Held Bonds*, 15 Wall. 300, *it was held* that while the taxing power of the State may extend to property within its territorial limits, it cannot to that which is outside those limits, and therefore *that bonds issued by a railroad company, although secured by a mortgage on property within the State, were not subject to taxation while in the possession of their owners who were non-residents.*" (Italics ours.)

Then this Court made it clear that the further question in the *Foreign Held Bonds* case, as to impairment of the obligation of contracts, arose by reason of the provision for withholding interest to pay the tax, by saying (p. 320):

> "It was held in that case that a statute requiring the railroad company, the obligor in such bonds, to pay the state tax, *and authorizing it to deduct the amount of such taxation from the interest due by the terms of the bond,* was as to non-residents a law impairing the obligation of contracts." (Italics ours.)

In *Blackstone v. Miller,* 188 U. S. 189, this Court said with reference to the *Foreign Held Bonds* case (p. 206):

> "Therefore, considering only the place of the property, it was held that bonds held out of the State could not be reached."

The *Foreign Held Bonds* decision has, so far as we can ascertain, never been criticised by this Court except in the case of *Savings and Loan Society v. Multnomah County,* 169 U. S. 421, wherein a dictum in the earlier case regarding the taxation of mortgaged lands was disapproved. In *Buck v. Beach, supra,* this Court said (p. 408):

> "Although the language of the opinion in the case of *State Tax on Foreign Held Bonds, supra,* has been somewhat restricted so far as regards the character of the interest of the mortgagee in the land mortgaged, *Savings &c. Society v. Multnomah County,* 169 U. S. 421, 428, *the principle upon which the case itself was decided has not been otherwise shaken by the later cases.*" (Italics ours.)

It is of course true, as this Court has said in *Blodgett v. Silberman, supra,* that the *Foreign Held Bonds* case is not authority for the proposition "that such bonds are to be completely assimilated to tangible personal property." The question of *complete* assimilation was not there involved. But we submit that the *Foreign Held Bonds* case is authority for the proposition that bonds, particularly State and municipal bonds, are so far assimilated to tangible personal property that they cannot be taxed at the State of the domicile of the bond debtor unless perchance the bonds themselves or the domicile of their owner are there.

On principle as well as authority the proposition for which we contend is sound. The problem of situs for taxation purposes should be treated in a practical rather than a technical

way. When the business world regards State and municipal bonds as things of value to be passed from hand to hand, every reason should impel the fixing of the situs of such securities for taxation purposes in the place where they are, except so far as the maxim *mobilia sequuntur personam* is applicable. In the present case we are not concerned with the exception since the bonds in question were in fact kept by Mr. Taylor in New York, the State of his domicile. The added fact may be noted that these bonds and the interest thereon were payable in New York. Under all these circumstances the sole tax situs of the bonds was New York.

Thus far we have dealt chiefly with Minnesota's right to impose a property tax upon the public bonds kept by Mr. Taylor in New York. The present case is an inheritance and not a property tax case. But it is now definitely settled that if a State is without power to impose a tax on property, by the same token it is without power to impose a tax upon the transfer of that property. In *Rhode Island Trust Co. v. Doughton*, 270 U. S. 69, this Court, after pointing out that a State may not tax property not within its territorial jurisdiction, said (p 80):

> "The tax here is not upon property, but upon the right of succession to property, but the principle that the subject to be taxed must be within the jurisdiction of the State applies as well in the case of a transfer tax as in that of a property tax. *A state has no power to tax the devolution of the property of a non-resident unless it has jurisdiction of the property devolved or transferred.*" (Italics ours.)

We take it as significant that this Court in illustrating this principle stated (p. 81) that in the case of intangibles like choses in action, shares of stock, *and bonds*, the situs of which

is with the owner, a transfer tax may be properly levied by the State in which he resides; but that when it considered which of these classes of property might be taxed by the State in which the corporation is organized, it mentioned *only* shares of stock, omitting all reference to bonds.

There is nothing in the decision or in the reasoning of the opinion in *Blodgett v. Silberman, supra,* inconsistent with appellant's position here. In that case it was held that the maxim *mobilia sequuntur personam* is applicable to United States bonds and treasury certificates even when those securities are outside the taxing State. This Court pointed out that this maxim is so deeply rooted as applied to this class of property that it must be accepted "whether it approve itself to legal philosophic test or not." (p. 10). But the extent of the power of the owner's domicile to tax bonds is not the question in the present case. Mr. Taylor's domicile and the place where his bonds were kept coincided and were not in Minnesota. The *Silberman* decision left the present question untouched (p. 10).

In the *Silberman* case this Court held that the transfer of certain bank notes owned by Mr. Hirsch (a Connecticut resident) but kept in New York at the date of his death was *not* taxable by Connecticut. It would thus appear that bank notes are so "completely assimilated to tangible personal property" that even the maxim *mobilia sequuntur personam* does not apply for taxation purposes as to them. Yet bank notes in substance do not differ from other promises to pay. This Court has said with reference to bills and notes in *Wheeler v. Sohmer, supra,* (p. 439):

> "It is true that in some cases there may be a recovery without producing and surrendering the paper, *but so may there be upon a bond in modern times.* It is not primitive tradition alone that gives their peculiarities to bonds, but

> a tradition laid hold of, modified and adapted to the convenience and understanding of business men. The same convenience and understanding apply to bills and notes, as no one would doubt in the case of bank notes, *which technically do not differ from others.*" (Italics ours.)

In the absence of statutory provisions to the contrary, bank notes may be physically destroyed and yet the debts remain and are recoverable.

Hagerstown Bank v. Adams Express Co., 45 Pa. St. 419, 429;

Robinson v. Bank of Darien, 18 Georgia 65, 111;

Wade v. New Orleans Canal Co., 8 Robinson (La.) 140;

Bank of Louisville v. Summers, 14 Monroe (Ky.) 306.

It is business usage that has given to bank notes their completely tangible characteristic.

We of course need not, for present purposes, argue that State and municipal bonds are to be regarded as tangible for all purposes, as apparently are bank notes. However, we may note in passing that historically such bonds and bank notes have from earliest times been classed together as a species of tangible property. (See cases cited on page 7 of this brief). What we do argue is that this Court's treatment of bank notes in the *Silberman* case indicates that there are degrees of tangibility; and that simply because public bonds and securities are not completely tangible so as to make the maxim *mobilia sequuntur personam* inapplicable does not at all mean that they are not so far tangible as to prevent the State of the bond debtors from taxing them or their transfer when they are owned by nonresidents and kept without the State.

Numerous State court decisions have involved substantially the question now presented and fully support appellant's position here.

In re Bronson, 44 N. E. (N. Y.) 707;
In re Fearing, 93 N. E. (N. Y.) 956;
In re Lowell, 203 N. Y. S. 312, affirmed in 147 N. E. (N. Y.) 183;
Walker v. People, 171 Pac. (Colo.) 747;
McLaughlin v. Cluff, 240 Pac. (Utah) 161;
Commonwealth v. Huntington, 138 S. E. (Va.) 650.

The *McLaughlin* and *Huntington* decisions are based primarily upon the construction of statutes but both review extensively the authorities.

The securities included in groups A, B, C and G of the stipulation of facts (R. 15-23, 30-32) are registered. In the State courts respondent urged that the fact of registration so distinguishes these securities from the others that *their* transfer at least is subject to the Minnesota Inheritance Tax.

Registration of securities does not lessen their tangibility. They are still negotiable and may readily pass from hand to hand outside the state. *Fletcher* in his *Work on Corporations*, Section 1010, says:

> "* * * and it has well been said by a prominent textbook writer that such a bond is as negotiable as a bearer bond and that 'the difference is rather in the method of the negotiability. As a bill or note payable to order is negotiable, so is a registered bond or debenture. * * *'"

In *Kelly v. Bell*, 83 N. E. (Ind.) 773, it was held that in order to convey legal title to registered bonds it is not necessary that the bonds be surrendered and new ones taken but that a proper endorsement and delivery is sufficient.

Had Mr. Taylor during his lifetime desired to transfer one of these registered bonds he would have executed an assign-

ment of it and his rights thereunder and delivered the bond and assignment to the assignee. Such assignee could either send the bond in and have it registered in his own name or before such registration he could assign it to still another party. There might have been several such assignments and transfers before further registration was had. Likewise Mr. Taylor could have made an assignment of the bond to bearer or in blank and the instrument might then have passed from hand to hand many times before it was actually registered to bearer or to the holder who finally filled in the blank with his name. Registration is primarily for the protection of the holder of the bond. It is simply a clerical act. It is not left to the bond debtor to determine for itself whether it wishes to recognize as the owner of the bond the person to whom it has been assigned by the registered holder. Suppose the assignee of one of the bonds here involved should send it in for registration but the State or municipal authorities arbitrarily declined to register it. In such a case there can be no doubt that the State or municipality would not be protected in paying the interest or principal to the former owner whose name appeared as registered holder. It is true that the assignee in such a case if he wishes to compel registration might have to come to Minnesota and by mandamus proceedings or otherwise force the State or municipal authorities to register the bond in his name. But the registration itself would be no part of the enforcement of the obligation to pay. Indeed it would give the bondholder no greater protection as against the bond debtor than would simple notice to it of his rights.

If we are correct in our contention that State and municipal *bearer* bonds physically outside the State of the bond debtor and owned by a non-resident are without the jurisdiction of that State for property tax and inheritance tax purposes, then

it must be true that the bare fact of their registration would not give the State power to tax those instruments or their transfer.

Suppose a Minnesota municipality for some reason chose to have its sole registration and transfer agent in the State of Delaware, can it be that Delaware would thereby acquire jurisdiction by reason of that fact alone to impose a tax upon its bonds or upon their transfer by devolution? We do not find any case in which this contention has been made. If Delaware in such a case would not have the power neither would that power be given to Minnesota in the present case by reason of the single fact that the bonds are registered.

We have found only one case, *Bliss v. Bliss,* 109 N. E. (Mass.) 148, that has made any distinction between bearer and registered bonds so far as the question of taxation is concerned. In that case the Court strongly intimated that it thought that Massachusetts could not tax the transfer of its own bearer bonds held outside the State and owned by a nonresident at the date of his death, but it felt that a different rule would apply to the transfer of registered bonds so held and owned. We cannot believe that the controlling effect which the Massachusetts Court gave to the bare fact of registration will commend itself to this Court. The decision of the Appellate Division of New York, First Department, *In re Lowell,* 203 N. Y. S. 312, involving registered bonds is diametrically opposed to the *Bliss Case.*

We therefore submit that the bonds in the present case, both bearer and registered, because of their tangible characteristics were property beyond the jurisdiction of Minnesota and that the atttempt of that State to impose a tax upon their transfer by will was in violation of the Fourteenth Amendment to the Federal Constitution.

(B). *Wholly apart from the tangibility of the securities, the debts due decedent from Minnesota and its municipalities did not have a situs in Minnesota so as to permit that State's imposing an inheritance tax upon their transfer by will.*

Under point (A) we have stressed the tangible character of the State and municipal bonds upon the transfer of which Minnesota seeks to impose an inheritance tax. We now turn to another aspect of the question. Entirely apart from their tangible quality and regarding the bonds for present purposes as mere evidence of debt, we contend that still Minnesota is without power to tax their transfer.

So far as we can ascertain it has never been held by this Court that the domicile of a debtor in a State, without more, will give to that State the power to tax a debt owed to a non-resident.

In the absence of special circumstances, the situs of a debt for taxation purposes is the domicile of the creditor and only there. This Court has said in *Kirtland v. Hotchkiss,* 100 U. S. 491, 498, 499 (recently quoted with approval in *Blodgett v. Silberman, supra*):

> "That debt, although a species of intangible property, may for purposes of taxation, if not for all others, be regarded as situated at the domicile of the creditor. * * * The debt, then, having its *situs* at the creditor's residence, both he and it are, for the purposes of taxation, within the jurisdiction of the State."

And in the case of *State Tax on Foreign Held Bonds, supra,* it was said (320):

> "All the property there can be in the nature of things in debts of corporations, belongs to the creditors, to whom they are payable, and follows their domicile, wherever that may be. *Their debts can have no locality separate from the parties to whom they are due.*" (Italics ours).

Twenty-five years later (in 1907) this Court in *Buck v. Beach, supra,* (p. 407) quoted the foregoing language and gave it its unqualified approval.

Again in *Murray v. Charleston*, 96 U. S. 432, 440, this Court, speaking with reference to bonds (called certificates of stock) of the City of Charleston, South Carolina, which were owned by a non-resident, said:

> "Debts are not property. A non-resident creditor cannot be said to be, in virtue of a debt due to him, a holder of property within the City * * *."

There appear to be only two exceptions to this long established rule, viz:

(1) When the debt is evidenced by a bond or other instrument which itself has come to be regarded as tangible property and is separated from the creditor's domicile.

(2) When the creditor has given the debt a "business situs" in some jurisdiction other than his domicile, usually resulting from the debt's growing out of business carried on in that other jurisdiction.

The first exception is illustrated by some of the cases cited under point (A) *supra*. The present case does not fall within this exception, since the securities were not kept in Minnesota, but in New York where Mr. Taylor lived.

The second exception has found application in:

New Orleans v. Stemple, 175 U. S. 309;
Bristol v. Washington County, 177 U. S. 133;
Board of Assessors v. Comptoir National, 191 U. S. 388;
Metropolitan Life Insurance Co. v. New Orleans, 205 U. S. 395;

Liverpool, etc., Insurance Co. v. Board of Assessors, 221 U. S. 346;

Orient Insurance Co. v. Assessors, 221 U. S. 358.

In none of the foregoing cases is there a suggestion that the domicile of the debtor *per se* fixes the situs of the debt for taxation purposes. On the contrary the thought running through all these decisions is that the tax situs of a debt is at the creditor's domicile, unless the creditor has by his conduct of business given it a situs elsewhere; and in each case this Court stresses the circumstances which have caused the situs to be fixed elsewhere than the creditor's domicile.

In the *Stemple* case the assessed credits were evidenced by notes secured by mortgage on New Orleans real estate. The notes and mortgage were in the possession of an agent in New Orleans who collected the proceeds and interest and deposited it in a bank in that city for the creditor who was domiciled in New York. The decision that these credits could be taxed in Louisiana was based partly upon the fact that they had been given a business situs there and partly upon the fact that the notes and mortgages (which the Court held Louisiana might and did treat as tangibles, like bank bills and municipal bonds) were there.

In the *Bristol* case it was held that notes of Minnesota residents, owned by a New York citizen, but payable at the office of agents in Minnesota, where the mortgages securing the notes were retained by the agents, and the notes were returned from time to time when required for renewal, collection or foreclosure, the agents collecting the money and making loans in the name of the principal, were property taxable in Minnesota. This Court quoted without disapproval the language of the

Minnesota Supreme Court in *In re Jefferson,* 35 Minn. 215, 220:

> *"A credit, which cannot be regarded as situated in a place merely because the debtor resides there,* must usually be considered as having its *situs* where it is owned,—at the domicile of the creditor. The creditor, however, may give it a business *situs* elsewhere; as where he places it in the hands of an agent for collection or renewal, with a view to reloaning the money and keeping it invested as a permanent business." (Italics ours.)

In the *Comptoir National* case a foreign banking company did business in New Orleans and there made loans through a local agent, on collateral security, the customer drawing his check which was treated as an overdraft and held as a memorandum of indebtedness. These debts, when paid, created a fund in the hands of the agent subject to loan and reinvestment by him without consultation with the principal. In holding these credits taxable in Louisiana, this Court said after reviewing the authorities (p. 403):

> "From these cases it may be taken as the settled law of this court that there is no inhibition in the Federal Constitution against the right of the State to tax property in the shape of credits *where the same are evidenced by notes or obligations held within the State, in the hands of an agent of the owner for the purpose of collection or renewal, with a view to new loans and carrying on such transactions as a permanent business."* (Italics ours.)

In the *Metropolitan Life Insurance Company* case, loans were made in Louisiana through the local agent of the insurance company, a New York corporation doing business in Louisiana, to its policy holders upon the security of their policies. Upon the approval of a loan at the company's home office its agent in Louisiana would procure the note to be

signed and forward it and the policy to the home office. The agent collected and transmitted the interest, and also collected the principal when due and upon payment delivered the notes back to the makers. These credits were held to have been given a tax situs in Louisiana, this Court saying (p. 402):

> "We are not dealing here merely with a single credit or a series of separate credits, but with a business. The insurance company chose to enter into the business of lending money within the State of Louisiana, and employed a local agent to conduct that business. It was conducted under the laws of the State. The State undertoook to tax the capital employed in the business precisely as it taxed the capital of its own citizens in like situation. For the purpose of arriving at the amount of capital actually employed, it caused the credits arising out of the business to be assessed. We think the State had the power to do this, and that the foreigner doing business cannot escape taxation upon his capital by removing temporarily from the State evidences of credits in the form of notes. Under such circumstances, they have a taxable situs in the State of their origin."

The case was said to be indistinguishable from the *Bristol* case, supra.

In the *Liverpool, etc., Insurance Co.* case, Louisiana taxed amounts due from its residents to a foreign insurance company for premiums on which credit had been extended. This Court stressed the fact that (p. 353) "the indebtedness had its origin in the course of business transacted * * * in Louisiana" and that it arose (p. 357) "in local business." The state court's decision was quoted (p. 349) from which it appeared that the credits *were due in Louisiana*. This Court

held that credits (p. 354) "arising as did those in the present case" could be taxed in Louisiana.

Lastly, in the *Orient Insurance Company* case in holding that premiums on insurance policies due on open account from residents of Louisiana to foreign insurance companies might be taxed by that state, this Court said (p. 360):

> "The premiums were the consideration for the insurance contracts, *they were the returns from the local business.*" (Italics ours.)

From these decisions we think it is manifest that a simple debt can have no situs for taxation purposes apart from the domicile of the creditor unless it be given a "business situs" elsewhere; and that "business situs" depends upon something more than the mere domicile of the debtor. Such "business situs" may result when the debts arise from a course of business conducted in a particular state (e. g. when a fund is kept in the state and invested and reinvested there) and is payable in that state.

Clearly the debts in the present case were not given a "business situs" in Minnesota. Mr. Taylor transacted no business there out of which the debts arose. He had no money in Minnesota which he was investing and reinvesting there. The debts themselves were all payable in New York, some being payable *only* there and some in New York or Minnesota at the option of the payee (R. 15, 19, 21, 24, 26, 28, 30); and prior to and at the date of Mr. Taylor's death each of the debtors maintained for such payment financial or fiscal agencies in New York as provided in the several securities here involved (R. 13).

We submit, therefore, that the debts owed by Minnesota and its municipalities, even regarded as simple debts, had no

situs in Minnesota so that that State could impose a property tax upon them. If this is true, then under the principle laid down in *Rhode Island Trust Company v. Doughton, supra,* neither did Minnesota have power to impose a tax upon their transfer at Mr. Taylor's death.

In the State Courts respondent rested heavily upon the decision of this Court in *Blackstone v. Miller, supra.* The first and complete answer to respondent's use of the *Blackstone* case as an authority for it in the present case, is that this Court, with great care, expressly excepted bonds from the doctrine there laid down and said (206):

> *"There is no conflict between our views and the point decided in the case reported under the name of State Tax on Foreign Held Bonds,* 15 Wall. 300. The taxation in that case was on the interest on bonds held out of the State. Bonds and negotiable instruments are more than merely evidences of debt. The debt is inseparable from the paper which declares and constitutes it, by a tradition which comes down from more archaic conditions. *Bacon v. Hooker,* 177 Massachusetts, 335 337. *Therefore, considering only the place of the property, it was held that bonds held out of the State could not be reached."* (Italics ours).

In the *Blackstone* case this Court did not distinguish the *Foreign Held Bonds* case upon the ground that it involved a property tax whereas the *Blackstone* case involved an inheritance tax but rather upon the ground that bonds are tangible in their character. Thus this Court negatived any idea that the decision in the *Blackstone* case is to be taken as an authority that a State may impose an inheritance tax upon the transfer of bonds owned and held without the State by a nonresident, though it may not impose a property tax upon the bonds themselves.

The *Blackstone* case dealt solely with the question of the right of New York to tax money deposited in a New York bank by a nonresident. The comparatively small debt due from a firm mentioned in the early part of the opinion was not considered for this Court stated on page 203 that the question was "whether the State had a right to tax the transfer by will of such deposit." Respecting this deposit this Court pointed out the practical similarity between money in the bank and actual coin, intimating strongly that its decision might have been based upon that ground.

Furthermore, the deposit in the *Blackstone* case was payable to the testator's order and might have been withdrawn on five days' notice and was in the meantime drawing interest. The fund had been in the bank for over a year and this Court points out that the testator probably was looking out for investments. On these facts it may well be said that that deposit or debt had in fact been given a business situs in New York.

In view of the limited question actually decided in the *Blackstone* case it seems fair to question whether this Court would hold that a State could tax the transfer of a simple debt due from one of its residents to a nonresident (that debt not being a bank deposit and not having been given a business situs in the State) upon the theory that it had power over the person of the debtor. The arguments against such an application of the theory are set forth in an article by Professor Beale in 32 Harvard Law Review, 600-605. But, be this as it may, that question cannot seriously concern appellant here since this Court, as we have pointed out, excepts cases like the present one from the doctrine of the *Blackstone* case.

(C) *Conclusion.*

The recent decisions of this Court disclose, we believe, a definite tendency to draw away from any theoretical conceptions respecting situs of property for taxation purposes which have the anomalous and unjust results of localizing property in more than one place at one time. In *Union Transit Company v. Kentucky*, 199 U. S. 194, the situs of tangible property for *property* tax purposes was held to be the place where the property is in fact and nowhere else. In *Frick v. Pennsylvania*, 268 U. S. 473, the same holding was made with respect to the situs of physical personal property for *inheritance* tax purposes, though this holding was contrary to an earlier dictum of this Court (*Blackstone v. Miller*, 188 U. S. 189, 204) and probably to the then general understanding and practice of State taxing authorities. Reason and justice require that one situs, and not several, be given to all property, whether tangible or intangible.

The case of *Blodgett v. Silberman*, *supra*, establishes that, because of the deeply rooted maxim *mobilia sequuntur personam*, public securities must still be regarded as having a tax situs at the domicile of their owner, no matter where the securities themselves are. In view of this decision, it might indeed be well if the owner's domicile were held to be their single situs irrespective of all other circumstances. But certainly if they are to be given any additional situs it should be only in the state where the securities are in fact kept, since in the business world such securities are universally treated and dealt with as tangible property. We submit that under no proper theory should such property be held to have still a *third* tax situs in the state of the debtor, solely by reason of the fact that the bond debtor resides there. In our case, as

has been pointed out, the place of the bonds and the domicile of their owner were in the same state, viz., New York. Under such circumstances New York is the single situs of these bonds for either property or inheritance tax purposes, and in the present estate New York has properly availed itself of its power by taxing their transfer (R. 13).

We submit, therefore, that the Minnesota inheritance tax law as construed and applied with respect to the transfer of the bonds here involved, the authority exercised under said law in imposing an inheritance tax upon that transfer, and the tax itself are a taking of property without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 26.

THE FARMERS LOAN AND TRUST COMPANY, as sole surviving executor of the last will and testament of HENRY R. TAYLOR, deceased,

Appellant,

vs.

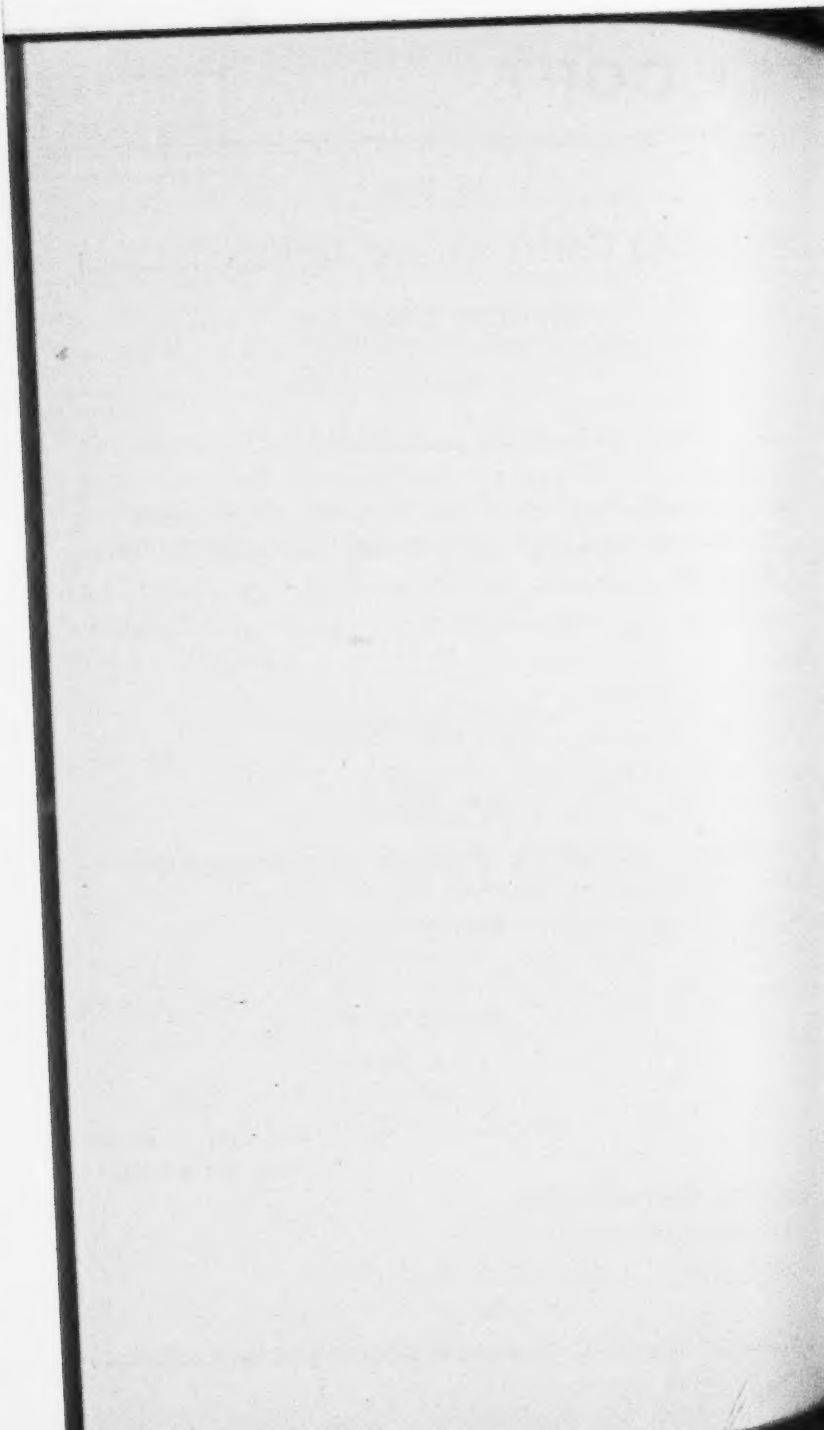
STATE OF MINNESOTA,

Appellee.

REPLY BRIEF ON BEHALF OF APPELLANT.

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Appellant,

vs.

STATE OF MINNESOTA,

Appellee.

REPLY BRIEF ON BEHALF OF APPELLANT.

We desire to reply briefly to two points made by the State in its brief.

I.

BLODGETT V. SILBERMAN DOES NOT DESTROY THE FOREIGN-HELD BONDS CASE AS AN AUTHORITY IN THE PRESENT CASE.

Counsel assert that *Blodgett v. Silberman,* 277 U. S. 1, destroys the *Foreign-Held Bonds Case,* 15 Wall. 300, as an authority for appellant's contention that bonds (particularly state

and municipal bonds), because of their tangible character, are not taxable at the domicile of the bond debtor if the bonds are owned by a non-resident and held outside the state. (See pp. 12, 21, State's Brief.) The decision cannot be read in that way. This Court simply held that the *Foreign-Held Bonds Case* is not authority for the proposition "that such bonds are to be *completely* assimilated to tangible personal property" (277 U. S. 14), so as to exclude the power of the domiciliary jurisdiction to tax. It held that even as to debts taking the form of bonds the maxim *mobilia sequuntur personam* must still apply. It did not disturb or touch upon the unequivocal holding in the *Foreign-Held Bonds Case* that bonds thus owned and held are property without the jurisdiction of the state of the bond debtor's domicile.

Counsel, in support of their assertion that the *Blodgett Case* destroys the authority of the *Foreign-Held Bonds Case* as to this principal holding, quote a passage from the opinion of this Court in the *Blodgett Case* (State's Brief p. 13); but we respectfully submit that an examination of the cases (*Savings Society v. Multnomah County*, 169 U. S. 421; *New Orleans v. Stempel*, 175 U. S. 309; *Blackstone v. Miller*, 188 U. S. 189) cited by this Court immediately before the quoted passage shows that those cases do not question the authority of the *Foreign-Held Bonds Case* upon that point. This ruling of the *Foreign-Held Bonds Case* was left untouched in the *Multnomah County Case*. It was affirmed in the *Stempel Case* where this Court said (p. 319):

> "In *State Tax on Foreign Held Bonds*, 15 Wall. 300, *it was held* that while the taxing power of the State may extend to property within its territorial limits, it cannot to that which is outside those limits, and therefore *that bonds issued by a railroad company, although secured by a mortgage on property within the State, were not subject*

to taxation while in the possession of their owners who were non-residents." (Italics ours).

It was again affirmed in *Blackstone v. Miller*, where this Court said, speaking specifically of the *Foreign-Held Bonds Case* (p. 306):

"Therefore considering only the place of the property, it was held that bonds held out of the State could not be reached." (Italics ours).

This Court did not in its opinion in the *Blodgett Case* say that it overruled the *Foreign-Held Bonds Case* nor the interpretation thereof in the cases cited in the passage referred to counsel. We respectfully submit that the *Blodgett* decision does not cast any doubt upon the correctness of the principal ruling in the *Foreign-Held Bonds Case* which stands as the law to this moment.

II.

Neither the Administration Cases Nor Garnishment Cases Are Authorities for the State's Contention that a Debt Has a Tax Situs at the Debtor's Domicile.

By a long line of decisions of this Court, of which *Blodgett v. Silberman*, 277 U. S. 1, is the last, it has been firmly settled that the state of the domicile of the creditor is the state which can tax a debt. See *State Tax on Foreign-Held Bonds*, 15 Wall. 300, *Kirtland v. Hotchkiss*, 100 U. S. 491, and *Buck v. Beach*, 206 U. S. 392, 401. Only under special circumstances, as, for example, where the debt has been given a business situs elsewhere or where the debt is in the form of a bond located elsewhere, is such a debt taxable in any other jurisdiction.

To oppose this established principle of law counsel have not produced, *and they cannot produce,* a single decision of this Court holding that a state can tax a simple debt by reason of the sole fact that the debtor is domiciled within its borders. *Blackstone v. Miller,* 188 U. S. 189, being a bank deposit case and involving a credit which had been given a business situs in New York, is on its facts no exception as we have shown in our original brief.

Lacking such authority, counsel are forced to turn to three decisions, viz.: *Wyman v. Halstead,* 109 U. S. 654, *Chicago, etc., Railway Co. v. Sturm,* 174 U. S. 710, and *Pennington v. Bank,* 243 U. S. 269,—none of which is a taxation case or in fact has anything to do with the problem at hand. It may be fairly said that upon these three cases, together with the *Blackstone Case,* Minnesota now places its entire reliance.

In *Wyman v. Halstead, supra,* this Court said (p. 656):

> "The general rule of law is well settled, that for the purpose of founding administration all simple contract debts are assets at the domicile of the debtor."

and it is this statement upon which counsel place so much reliance.

At common law a foreign administrator could not sue in a state. Under this rule if a nonresident creditor of a resident debtor died, the debtor could successfully avoid the payment of his debt by the simple method of never leaving the state of his domicile. To avoid this intolerable situation, this and other Courts held that "for the purpose of administration" debts should be considered assets at the domicile of the debtor. This rule grew out of necessity as explained by Mr. Justice Gray, then a member of the Massachusetts Supreme Judicial Court, in *Pinney v. McGregory,* 102 Mass. 186, 192:

"Before that statute, the probate courts of the Commonwealth exercised the jurisdiction of granting administration on property belonging or debts due to persons residing abroad, in order to enable them to be collected in this state, because without such appointment no suit could be brought in Massachusetts for the assets or debts of the deceased, either in the courts of the Commonwealth or of the United States."

Counsel's argument must be that because a debt is assets at the domicile of the debtor so that it may there be collected for the benefit of the nonresident creditor's estate, therefore the debt has a situs there for taxation purposes. *New England Mutual Life Insurance Co. v. Woodworth*, 111 U. S. 138, demonstrates the fallacy of such an argument. In that case it was held that administration could be had in a state where the debtor, a corporation, was not domiciled but was simply doing business. Administration was permitted not because of necessity but as a matter of convenience. It follows that if a corporation debtor is doing business in the state of its creation as well as in the other forty-seven states, administration could be founded with respect to the single debt in every state in the union. But does this mean that that debt could be taxed by each of the forty-eight states? This is unthinkable. The *Woodworth Case* simply shows that the so-called "situs" of a debt for administration purposes has nothing whatever to do with its "situs" for taxation purposes.

Neither do the *Sturm* and *Pennington cases, supra*,—the garnishment cases,—have any bearing upon the present question of taxation. They hold that to secure payment of the obligation due him, a creditor can attach a debt owing his debtor at the domicile of the latter's debtor. In the *Sturm Case* this Court made it plain that this is so not because the "situs" of

the debt is with the debtor but, again, because of necessity. This Court reluctantly spoke in terms of "situs" at all (p. 715, 716):

> "The essential service of foreign attachment laws is to reach and arrest the payment of what is due and might be paid to a non-resident to the defeat of his creditors. To do it he must go to the domicile of his debtor, and can only do it under the laws and procedure in force there. *This is a legal necessity, and considerations of situs are somewhat artificial.*

Again (p. 716):

> *"To ignore this is to give immunity to debts owed to non-resident creditors from attachment by their creditors, and to deny necessary remedies.*

And again (p. 716):

> *"This, as we have already said, is a necessity, and it cannot be evaded by the insistence upon fictions or refinements about situs or the rights of the creditor.* (Italics ours.)

Sixteen years after the *Sturm* decision this Court, in *Harris v. Balk,* 198 U. S. 215, held that a debt may be garnisheed in any state in which the debtor can be served with process, even though that state is not his domicile and he is there but temporarily. In its decision this Court rejected all consideration of the "situs" of the debt. It said (p. 222):

> "We do not see how the question of jurisdiction *vel non* can properly be made to depend upon the so-called original *situs* of the debt, or upon the character of the stay of the garnishee, whether temporary or permanent, in the State where the attachment is issued."

Again on the same page it said:

> "We do not see the materiality of the expression '*situs* of the debt' when used in connection with attachment proceedings."

Still again on page 223, it said:

"In such case the *situs* is unimportant."

The *Harris Case* disposes beyond question of any argument that because a debt can be garnisheed at the domicile of the debtor, therefore the situs of the debt is there. Certainly it cannot be argued that a debt can be taxed wherever it can be garnisheed, for if this were so, then under the *Harris* decision every state in the Union could tax a single debt due from a corporation provided that corporation were doing business in all the states. (See: *Louisville, etc., R. R. v. Deer,* 200 U. S. 176; *B. & O. R. R. v. Hostetter,* 240 U. S. 620). Manifestly this cannot be.

The doctrine of the *Wyman* and *Sturm cases* was based upon necessity. The *Woodworth* and *Harris* cases extended the doctrine because of convenience. This extension deprives the earlier cases of whatever value as authorities they might otherwise have had for the State of Minnseota in the present case.

Counsel seek to make use of the case of *Baker v. Baker, Eccles & Company,* 242 U. S. 394 (State's brief, p. 9). Counsel obviously meant to say "decedent's domicile" instead of "debtor's domicile" in the third line of the paragraph, but counsel err in assuming that in that case Tennessee was decedent's domicile. "The place of his domicile, admittedly determinative of the law of distribution, was in controversy" (p. 395), and for that reason litigation arose. Because of counsel's reliance upon the *Baker* case as they construed it, we think it proper to restate its facts briefly. Charles Baker died owning real and personal property in Tennessee and shares of stock and a claim against Baker, Eccles & Company, a Kentucky corporation. According to Tennessee laws all the personal property would go to the widow; according to Kentucky laws half would go to the widow and half to

the mother. The widow obtained judgments in two Tennessee courts whereby it was determined that decedent was domiciled in that state and hence that the widow was entitled to all the personal property, including the debt. But neither of these proceedings was *in personam* in nature; the mother was not brought in as a party save by publication. The widow then brought suit in Kentucky against Baker, Eccles & Company to compel the transfer to her of the stock and to recover the debt. The mother intervened. This Court held that Kentucky was not required to give faith and credit to the Tennessee judgments, not being judgments *in personam*, except insofar as they affected the property indisputably in Tennessee. Whether the debt was property in Tennessee or Kentucky depended upon a determination of the creditor's domicile. Kentucky was the first state to render a judgment *in personam* on that question binding on all parties, and by that judgment the domicile was found to be in Kentucky. It followed as a matter of course that the debt should be administered according to Kentucky law.

Had the Kentucky proceeding not been *in personam* in nature, no other state which might thereafter have actual personal jurisdiction over all the parties interested would have been bound by the Kentucky judgment with respect to domicile and therefore with respect to the debt due from the Kentucky corporation. This thought is implicit in the following language of this Court (p. 404):

> "Unless all possible distributees can be brought within the jurisdiction of a single court having authority to pass upon the subject matter, either by service of process or by their voluntary appearance, it must in many cases be impossible to have a single controlling decision upon the question (i. e. domicile)."

Keeping in mind that the question of domicile, a determination of which would fix the place of the debt for distribution, was in dispute, there is nothing in either the decision or the language of this Court in the *Baker* case that in the least aids the State in the present case.

Respectfully submitted,

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Supreme Court of the United States

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No. 26.

THE FARMERS LOAN & TRUST COMPANY, AS SOLE SURVIVING EXECUTOR OF THE LAST WILL AND TESTAMENT OF HENRY R. TAYLOR, DECEASED, *Appellant,*

vs.

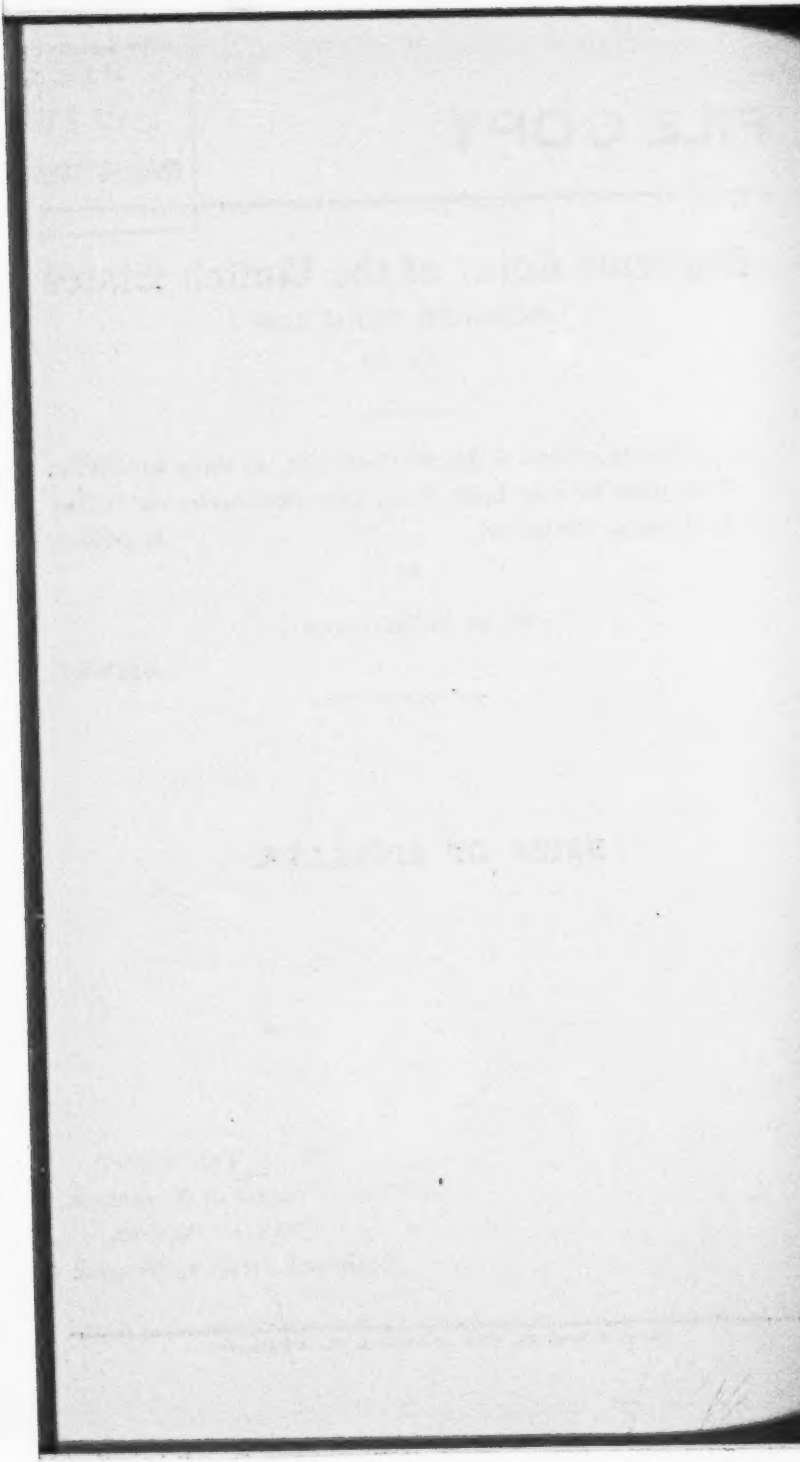
STATE OF MINNESOTA,

Appellee.

BRIEF OF APPELLEE.

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vs.

STATE OF MINNESOTA,

Appellee.

BRIEF OF APPELLEE.

STATEMENT OF THE CASE.

This appeal involves the right of Minnesota to impose an inheritance tax on the transfer of bonds and certificates of indebtedness issued by the state and two of its municipalities, owned by a resident of New York and the written evidences of the debts kept in that state. Although it is the rule in Minnesota that the state may tax the transfer of debts owed by resident debtors to non-resident creditors, the Supreme Court of the state first held that the bonds here in question were tangibles and in effect that the debt had no existence apart from the written instruments evidencing the debts (*State vs. Taylor,* 175 Minn. 310; R. 50-53).

Upon petition for reargument filed after the decision in *Blodgett vs. Silberman,* 277 U. S. 1, the state court, follow-

ing the rule laid down in that case, declared the bonds to be intangible and, applying the rule noted above, held the tax a valid one (*State vs. Taylor, supra,* p. 314; R. 55-56).

The judgment appealed from appears as *"In the Matter of the Inheritance Tax on the Estate of Henry R. Taylor, Deceased,"* 176 Minn. 634. The stipulated facts are sufficiently stated in appellant's brief.

The sole question presented by this appeal is this:

Does the due process clause of the Fourteenth Amendment to the Constitution of the United States prevent the State of Minnesota from levying an inheritance tax upon the transfer of debts owed by the state and its municipalities to a non-resident and evidenced by bonds kept at his domicil?

SUMMARY OF ARGUMENT.

1. The language of the Minnesota statute imposing an inheritance tax, as construed by its Supreme Court, is sufficiently comprehensive to include a tax on the transfer of the bonds involved in the case at bar.

2. The tax here imposed is not upon property but upon the right or privilege of transfer granted by the state.

3. Minnesota has jurisdiction to tax the transfer of credits owed by a person or corporation domiciled therein or otherwise within its control, irrespective of the creditor's domicil.

4. *Blackstone vs. Miller* considered in conjunction with *Blodgett vs. Silberman* is decisive of the case at bar in favor of appellee.

5. Double taxation is not violative of the due process clause of the fourteenth amendment to the United States constitution.

6. The debts evidenced by the bonds in the case at bar can be enforced only through the laws of Minnesota—hence Minnesota has power to tax their transfer.

7. The question of taxable situs is not affected by registration and place of payment of bonds.

8. None of the cases cited by appellant involve the right of the state of the debtor's domicil to impose an inheritance tax on the transfer of state and municipal bonds. Therefore they do not support appellant's position in this case.

9. Decisions of courts in other states support the principle that the state of the debtor's domicil can tax the transfer of debts protected by it.

10. Theoretical discussion of technical situs should not be permitted to obscure the principle that power over the debtor confers power to tax the transfer of the debt. Court should exercise caution in applying the fourteenth amendment so as to cut down the taxing power of the states.

ARGUMENT.

I.

The State Statute Imposing the Tax Includes the Transfer of These Bonds.

General Statutes of Minnesota 1923, §2292, provides:

> "A tax shall be and is hereby imposed upon any transfer of property, real, personal or mixed, or any interest therein, * * * to any person, association or corporation, * * * in the following cases:
>
> * * * * * * * * * *
>
> (2) When a transfer is by will or intestate law, of property within the state or within its jurisdiction and

the decedent was a non-resident of the state at the time of his death."

"The legislature intended to, and did, impose a tax upon the right of succession to the personal property of non-resident decedents, in all cases in which such property is within this state, or subject to the laws of this state."

State ex rel. Graff vs. Probate Court, 128 Minn. 371, 379.

II.

The Tax Is Not Upon Property But Upon the Right or Privilege of Transfer Granted by the State.

"The tax in question is not a tax upon property but a tax upon the right of succession thereto."

State ex rel. Graff vs. Probate Court, supra, p. 381.

"The tax is not upon property, but upon the privilege of succession, which the state may grant or withhold.

"* * * it is settled * * * that the state of the debtor's domicil may impose a succession tax. (*Blackstone vs. Miller,* 188 U. S. 189, 205; *Baker vs. Baker, Eccles & Company,* 242 U. S. 394, 401.)"

Maxwell vs. Bugbee, 250 U. S. 525, 541, 543.

See *Knowlton vs. Moore,* 178 U. S. 41, 47.

United States vs. Perkins, 163 U. S. 625, 628.

Mager vs. Grima, 8 How. 490, 493.

The Minnesota rule is in accord with the rules laid down by this court: That the right to transmit or take property by devise or descent is a creature of the law and not a natural right; that an inheritance tax is a limitation or condition upon the right to transmit or take; and that an in-

heritance tax is not a tax on the property transferred at death, but one predicated upon the passing of property as the result of death, as distinguished from a tax on property dissociated from such transfer.

Mager vs. Grima, 8 How. 490, 493.
United States vs. Perkins, 163 U. S. 625, 628, 629-630.
Magoun vs. Illinois Trust and Savings Bank, 170 U. S. 283, 288.
Knowlton vs. Moore, 178 U. S. 41, 47, 54-56.
Plummer vs. Coler, 178 U. S. 115.
Orr vs. Gilman, 183 U. S. 278, 289.
Bullen vs. Wisconsin, 240 U. S. 625.

In the case of a debt, however evidenced, its quality as property, after the death of the creditor and before the payment of the tax upon its transfer, is in suspension; for

> "It is not until it has yielded its contribution to the state that it becomes the property of the legatee."
> *United States vs. Perkins, supra*, p. 628.

III.

Minnesota Has Jurisdiction to Tax the Transfer of Credits Owed by Persons or Corporations Domiciled Within Its Borders, or Otherwise Within Its Control, Regardless of the Domicil of the Creditor.

This statement is supported by three propositions:

(1) The law of the domicil of the decedent has no extra-territorial force; the right of transfer thereunder is given effect only by the express or tacit consent of the state of the situs of the property; and the recognition of the law of the domicil is limited by the policy of the local law.

This proposition is stated by Story in his Conflict of

Laws, quoted in *Catlin vs. Hull,* 21 Vt. 152, 160, as follows:

> "The laws of every state affect and bind directly all property whether real or personal within its territory, * * * and all contracts made and acts done within it. A state may therefore regulate the manner and circumstances, under which property, whether real, or personal, or in action, within it shall be held, transmitted, bequeathed, transferred, or enforced."

In *Blackstone vs. Miller,* 188 U. S. 189, the court said that it is plain that the transfer by inheritance is subject to the power of the state of the debtor's domicil, and that the state may subject the transfer to a tax, because the transfer depends upon the law of that state. It also said (p. 204):

> "To a considerable, although more or less varying, extent the succession determined by the law of the domicil is recognized in other jurisdictions. But it hardly needs illustration to show that the recognition is limited by the policy of the local law."
>
> See also *Baker vs. Baker, Eccles & Co.,* 242 U. S. 394, 400.

While tangible personal property was the subject of the court's discussion in *Frick vs. Pennsylvania,* 268 U. S. 473, 491, its language may, by reason of the cases cited in support of it, be applied to intangibles:

> "Other decisions show that the power to regulate the transmission, administration, and distribution of tangible personal property on the death of the owner rests with the state of its situs, and that the laws of other states have no bearing save as that state expressly or tacitly adopts them; their bearing then being attributable to such adoption and not to any force of their own."

(2) A debt constitutes assets where the debtor lives, regardless of the residence of the creditor and the whereabouts of the written evidence of the debt, and has locality in the domicil of the debtor for the purpose of founding administration and for the purpose of attachment and garnishment.

As said in the case of *Wyman vs. Halstead*, 109 U. S. 654, 656:

> "The general rule of law is well settled that for the purpose of founding administration, all simple contract debts are assets at the domicil of the debtor; and that the locality of such a debt for this purpose is not affected by a bill of exchange or promissory note having been given for it, because the bill or note does not alter the nature of the debt, but is merely evidence of it, and therefore the debt is assets where the debtor lives, without regard to the place where the instrument is found or payable."
>
> "Indebtedness due from a resident to a non-resident —of which bank deposits are an example—is property within the state."
>
> *Pennington vs. Fourth National Bank*, 243 U. S. 269, 271.

In *Chicago, etc., Ry. Co. vs. Sturm*, 174 U. S. 710, 716, the court, in holding that a debt may be attached at the domicil of the debtor although the creditor's domicil is in another state, said that, in order to reach and arrest payment of what is due and might be paid to a non-resident to the defeat of his creditors,

> "He must go to the domicil of his debtor, and can only do it under the laws and procedure in force there. This is a legal necessity, and considerations of situs are somewhat artificial. If not artificial, whatever of

substance there is must be with the debtor. He, and he only, has something in his hands. That something is the *res*, and gives character to the action, as one in the nature of a proceeding *in rem*."

(3) The law of the debtor's domicil protects the debt, has power over the person of the debtor, compels the payment of the debt, and gives it validity.

As said in *Blackstone vs. Miller, supra;* pp. 205, 206:

"What gives the debt validity? Nothing but the fact that the law of the place where the debtor is will make him pay. It does not matter that the law would not need to be invoked in the particular case. * * * So again, what enables any other than the very creditor in proper person to collect the debt? The law of the same place. * * *

Power over the person of the debtor confers jurisdiction, we repeat. And this being so we perceive no better reason for denying the right of New York to impose a succession tax on debts owed by its citizens than upon tangible chattels found within the state at the time of the death. The maxim *mobilia sequuntur personam* has no more truth in the one case than in the other. When logic and the policy of a state conflict with a fiction due to historical tradition, the fiction must give way."

See also *Liverpool, etc., Insurance Co. vs. Board of Assessors for the Parish of Orleans,* 221 U. S. 346, 354.

And, in the case of *Maxwell vs. Bugbee,* 250 U. S. 525, 543, the court definitely and comprehensively said:

"It is settled that, * * * the state of the debtor's

domicil may impose a succession tax. (*Blackstone vs. Miller,* 188 U. S. 189, 205; *Baker vs. Baker, Eccles & Co.,* 242 U. S. 394, 401.)"

The foregoing propositions find further support in *Baker vs. Baker, Eccles & Co., supra.* There the state of the decedent's domicil adjudged that his widow succeeded to a debt owing by and shares of stock in a Kentucky corporation. The court held the judgment invalid as against a Kentucky claimant not a party to the original proceeding. It is true that the decision was based on the proposition that the Kentucky claimant was not a party to the proceeding in Tennessee; but, since probate proceedings are *in rem,* it must necessarily be true that the probate proceeding in the Tennessee court would have vested title in the widow had the debt had its situs in Tennessee and nowhere else.

Appellant relies upon language used in the case of *Rhode Island Trust Co. vs. Doughton,* 270 U. S. 69, 80-81, to the effect that the principle that the subject to be taxed must be within the jurisdiction of the state applies as well in the case of a transfer tax as in that of a property tax, and that a state has no power to tax the devolution of the property devolved or transferred. The court was speaking of the *subject* taxed. ~~There the subject of the tax was property—the debt; here it is the transfer of it.~~ It is settled by numerous decisions of this court and by decisions of the state court that the subject of a transfer tax is the right or privilege which may be granted or may be withheld by the state which protects the debt and under whose laws it may be transferred, enforced or impounded. No involuntary act concerning the debt can be compelled except by recourse to the laws of the debtor's domicil. Having thus governmental dominion over the debt for every purpose, it may impose a condition

upon its transfer by inheritance; and that is the subject of the tax here involved.

Further discussion of the Doughton case is not required. There North Carolina undertook to impose an inheritance tax upon shares of stock owned by a non-resident in a New Jersey corporation. The subject of the tax was the transfer of these shares, which had no situs for any purpose in the state levying the tax, because the property of the corporation is not property of the shareholder. There is no similarity between the relation of a stockholder to the property of the corporation and the relation of a creditor to a debt owed directly to him.

IV.

The Cases of Blackstone vs. Miller and Blodgett vs. Silberman Are Decisive of the Case at Bar.

If the foregoing discussion have value, it is only as an exposition of fundamental principles, for the controversy presented in the case at bar is settled by a correlation of the rules laid down in two decisions: *Blackstone vs. Miller* and *Blodgett vs. Silberman*. In the first it was held that the transfer of a bank deposit and a simple debt was taxable by the state of the debtor's domicil because they were intangible property, choses in action. In the second it was held that debts evidenced by public bonds are intangible property, choses in action. In combination they hold that the transfer of debts evidenced by public bonds is taxable at the debtor's domicil.

Since these cases are controlling, they merit further discussion.

In the Blackstone case a testator domiciled in Illinois

transferred by will a debt owed by a New York resident and a deposit in a New York trust company. Illinois taxed the transfer. New York also taxed it under a statute similar to that of Minnesota. The New York tax was attacked on the ground, among others, that it violated the Fourteenth Amendment. After pointing out that the succession determined by the law of the decedent's domicil was generally recognized in other jurisdictions, the court said:

> "But it is plain that the transfer does depend upon the law of New York, not because of any theoretical speculation concerning the whereabouts of the debt, but because of the practical fact of its power over the person of the debtor. * * * What gives the debt validity? Nothing but the fact that the law of the place where the debtor is will make him pay. It does not matter that the law would not need to be invoked in the particular case. * * *
>
> "Power over the person of the debtor confers jurisdiction, we repeat. And this being so, we perceive no better reason for denying the right of New York to impose a succession tax on debts owed by its citizens than upon tangible chattels found within the state at the time of the death. The maxim *mobilia sequuntur personam* has no more truth in the one case than in the other. When logic and the policy of a state conflict with a fiction due to historical tradition, the fiction must give way" (pp. 205-206).

And further:

> "The universal succession is taxed in one state, the singular succession is taxed in another. The plaintiff has to make out her right under both in order to get the money" (p. 207).

And again:

"It [the tax] does not violate the 14th Amendment" (p. 207).

The appellant seeks to make something of the fact that the court speaks principally of the bank deposit rather than of the debt of $10,692.24 owed by a New York firm. It would appear that, while the decedent's representative claimed that New York had jurisdiction of the transfer of neither, his principal contention was that the deposit at least should be treated as tangible property by reason of its asserted similarity to coin in the pocket. But the basis of the decision makes it clear that it has full application to the debt as well as to the deposit.

The decision in the Blackstone case is bottomed on the propositions that the state of the debtor's domicil has jurisdiction to control the transfer and to compel the payment of the debt, and those propositions are equally applicable to the bonds here taxed, for the transfer can not be made, nor can payment be compelled, save under the law of Minnesota.

The court did say that a debt evidenced by a bond or negotiable instrument is inseparable from the paper which declares and constitutes it. Here the court was discussing the case of *State Tax on Foreign-Held Bonds*, 15 Wall. 300. That case involved a property tax and not a transfer tax; but the important consideration is that in the Blackstone case the court was in no way concerned with the situs of debts evidenced by bonds and negotiable instruments and had no occasion to decide that question. It never has held that the transfer of debts evidenced by bonds or by negotiable instruments may not be taxed by the state of the debtor's domicil. Furthermore, the decision in the Blodgett case has completely wiped out whatever significance the dicta

in this and other cases may have had.

In the Blodgett case the court had under consideration the power of Connecticut, the state of the decedent's domicil, to tax bonds and treasury certificates of the United States owned by the decedent and kept in New York, a savings account in that state, and certain other property. Relying upon the language used in the Foreign-Held Bonds case and other cases, the decedent's representative contended that the bonds were tangible in character, and that under the rule laid down in the case of *Frick vs. Pennsylvania*, 268 U. S. 473, they could be taxed only where the evidences thereof are kept.

The court opens the discussion by defining exactly the holding in the Foreign-Held Bonds case,—

> "that the law of Pennsylvania in requiring the railroad company, which issued the bonds, to pay the state tax on them and deduct it from the interest due the non-resident owners, was as to them a law impairing the obligation of contracts under *Murray vs. Charleston*, 96 U. S. 432" (p. 14).

It may be added that the bonds in question were secured by a mortgage on property in Pennsylvania and in other states. Since the creditors could therefore have enforced payment of the debt without going into Pennsylvania for that purpose, the case would have no bearing on the question now presented to the court even if it had been decided on grounds other than that last stated.

The court then states the question and gives its answer:

> "The question here is whether bonds, unlike other choses in action, may have a situs different from the owner's domicil such as will render their transfer taxable in the state of that situs *and in only that state*.

We think bonds are not thus distinguishable from other choses in action. It is not enough to show that the written or printed evidence of ownership may, by the law of the state in which they are physically present, be permitted to be taken in execution or dealt with as reaching that of which they are evidence, even without the presence of the owner. While bonds often are so treated, they are nevertheless in their essence only evidences of debt. The Supreme Court of Errors expressly admits that they are choses in action. Whatever incidental qualities may be added by usage of business or by statutory provision, this characteristic remains and shows itself by the fact that their destruction physically will not destroy the debt which they represent. *They are representative and not the thing itself*" (Italics ours) (pp. 14, 15).

It repeats that bonds are representative only and are not the thing represented and that "they are at most choses in action and intangibles" (p. 17).

The securities there involved were bonds and treasury certificates of the United States. If any bonds constitute tangible property, these must, for they more nearly approach the character of currency and coinage than do any other. Bonds of states and of municipalities are less certain of payment and, consequently, less constant in value. The history of this country and the decisions of this court present instances of default. These have left their impression; and, whatever may be said of skilled investors, it is nevertheless true that the general public exercise far greater caution in the purchase of bonds of municipalities and states than in the purchase of bonds of the United States.

The decision erases completely all earlier suggestions that

debts represented by bonds are tangible in character, are not choses in action, and are subject only to the jurisdiction of the state in which the paper is found. It would seem that there can be no distinction between one debt and another, or one chose in action and another, in respect of jurisdiction for the purpose of taxing the transfer. In each case the state of the debtor's domicil gives the same protection to the debtor, affords the same means of compelling payment, exerts the same control over transfer by succession. If in the Blackstone case these furnished grounds for taxing the transfer of choses in action consisting of a bank deposit and a simple debt, so must they also furnish the ground for taxing the transfer of choses in action consisting of debts owed by a state and its municipalities, whether they be evidenced by paper writings or not.

The court said that the principle of the maxim *mobilia sequuntur personam* "is not to be shaken by the inquiry into the question whether the transfer of such intangibles, like specialties, bonds or promissory notes, is subject to taxation in another jurisdiction." That inquiry was not involved even collaterally, for New York had not undertaken to tax the bonds, nor could it have done so except on the theory that they constitute tangible property. As intangibles they had no situs apart from the domicil of the owner; for the debtor, the United States, has no locality, is ubiquitous throughout the Union, and within its proper sphere is subject to the control of no state.

Wyman vs. Halstead, supra.

V.

One Tax Is Not Invalidated by the Imposition of Another Upon the Same Transfer.

Appellant suggests that all property, whether tangible or intangible, should have a single situs for purposes of taxation. But there is no constitutional objection to taxing in two separate jurisdictions a single property or privilege.

> "The fact that two states, dealing each with its own law of succession, both of which the plaintiff in error has to invoke for her rights, have taxed the right which they respectively confer, gives no cause for complaint on constitutional grounds. *Coe vs. Errol,* 116 U. S. 517, 524; *Knowlton vs. Moore,* 178 U. S. 53."
>
> *Blackstone vs. Miller, supra,* p. 207.

But if intangibles were to have a single situs for the purpose of a property tax or of a transfer tax, or only one additional to that at the domicil of the owner, that situs should be the domicil of the debtor for the reasons stated by a writer in 31 *Harvard Law Review* 930, 931:

> "* * * the sovereign of the debtor's domicil has control over the obligation by having jurisdiction over the debtor, and protects it and the debtor and makes the debt valuable to the creditor. It protects the foreign creditor as respects the debt in the same way it does the foreign owner of tangible property within its jurisdiction. And in like manner such state and such state alone should be the one to levy the tax."

Many states have, by the enactment of reciprocal exemption laws, chosen to relinquish conditionally the power to tax local intangibles of non-residents. Progress in that

direction is rapid. About two-thirds of the states of the Union grant such exemption in one form or another. Minnesota has not yet joined their ranks and still avails itself of its right to tax the transfer of such intangibles. Perhaps hardships sometimes result; but whether the practice shall be changed is for the determination of the legislature and not of the courts.

VI.

Payment of the Bonds Is Provided for and Can Be Enforced Only Through the Laws of Minnesota.

Some of the debts are evidenced by bonds, and some by certificates of indebtedness issued by the state. The others are bonds issued by the cities of St. Paul and Minneapolis.

Bonds of the state and its municipalities are peculiarly local in character. It is not enough that payment can be enforced only through the agencies of the state, but even voluntary payment can be made only as is authorized by its statutes and municipal ordinances. It is not necessary to refer to the statutes and ordinances under which the public officers levy taxes for the payment of principal and interest and disburse the funds.

In the event of default in the payment of principal or interest on the city bonds, the owner must obtain judgment against the city in the local courts. If the officers then refuse to levy the taxes necessary for the payment of the judgment as required by General Statutes 1923, §§ 1834 and 1836, proceedings must necessarily be instituted against them in Minnesota to compel the performance of that duty.

In the event funds were lacking for the payment of principal or interest on the registered rural credit bonds of the state, those funds can be provided only by the issuance of

certificates of indebtedness by the rural credit board, followed by its issuance of a tax levy certificate and the levying of a tax by the state auditor for their payment. General Statutes 1923, §6041. Performance of these acts can be compelled only by proceedings in Minnesota.

In the event funds were lacking for the payment of the certificates of indebtedness issued by the Minnesota Soldiers' Bonus Board, they can be supplied only through the tax levy required to be made by the state auditor. Laws of Minnesota, Extra Session 1919, ch. 49, §12; *Gustafson vs. Rhinow*, 144 Minn. 415. Here again the levy of the tax can be compelled only by proceedings in Minnesota.

In every instance it is Minnesota law that furnishes the means of payment and compulsion to provide it.

VII.

Registration and Place of Payment Immaterial on Question of Situs.

Some bonds were payable in New York, some in New York or Minnesota at the option of the payee, and some in New York or Minnesota without mention of option. This designation is made merely for the convenience of the holder. It affects neither the vitality of the debt nor its enforcement and hence has no bearing on its situs. Payment could not be enforced under the laws of New York. The debtors could not be sued there, nor could the courts of New York enforce the statutes of Minnesota requiring officers to take the necessary steps to provide revenue for the payment of the bonds.

The designation of the place of payment does not affect the character or the locality of the debt.

Wyman vs. Halstead, 109 U. S. 654, 658.

Nor is it important that some of the bonds were registered and some were not, for the tax is not imposed upon the bonds or the debt as property, nor upon its transfer *inter vivos*, but upon its transfer by will. ~~a decent~~

It may be noted, however, that Massachusetts has held that in the case of registered bonds the state law must be resorted to for effectuation of the transfer (*Bliss vs. Bliss*, 221 Mass. 201). It should also be said that whatever transfer the owner may make, registration must ultimately take place, for only the registered owner is entitled to collect principal and interest, and the registration is an act which occurs in Minnesota and can be compelled only by the courts in Minnesota. The difference in remedy between registered and unregistered bonds is one of degree only.

VIII.

Cases Cited by Appellant Easily Distinguishable From Case at Bar.

Buck vs. Beach, 206 U. S. 392, does not support appellant's position. In that case the state of Indiana claimed the right to tax as property promissory notes owned by a non-resident, made by residents of Ohio, payable there, and having no business situs in Indiana. The sole question presented to this court was whether the mere presence of the notes in Indiana constituted the debts, of which the notes were the written evidence, property within the jurisdiction of that state, so that such debts could be therein taxed. In other words, were the notes tangible property? This court held that they were not and that Indiana had no right to tax them simply because of their presence in that state.

The opinion points out that if it should become necessary

to enforce payment of them the owner could not resort to the courts of Indiana. Hence, Indiana furnished no protection to him.

The dicta on page 407, that public securities have sometimes been treated as property in the place where they were found though removed from the domicil of the owner, has been deprived of any force by the decision in *Blodgett vs. Silberman.*

Wheeler vs. Sohmer, 233 U. S. 434, involved the power of New York to levy an inheritance tax on promissory notes owned by a non-resident and kept by him in a safety deposit box in New York. This court held that the notes had a taxable situs in New York.

Neither of these cases involve the power of the state of the debtor's domicil to levy an inheritance tax on the transfer by the death of a non-resident of municipal and state bonds owned and kept by him in the state of his domicil. This question was not discussed in either case. The only reason for appellant's citation of these cases is that this court made use of certain dicta to the effect that bonds and public securities constitute a species of tangible property. As this court has now held unequivocally that such securities are intangible, the force of this dicta has been entirely dispelled.

The same is true of the cases of *Walker vs. People,* 64 Colo. 143; *McLaughlin vs. Cluff,* 66 Utah 245; *Commonwealth vs. Huntington,* 148 Va. 97.

In addition to the fact that in all of these cases the bonds which it was sought to tax were bonds of a domestic corporation secured by mortgages on real estate situated in foreign jurisdictions and hence the creditor did not need to resort to his remedy in the taxing state, the decisions of those courts all conflict with the decision of this court that such obligations are intangible. Also, it might be pointed

out that these cases involve questions of statutory construction, which are not federal questions. As an instance of the latter point, in *McLaughlin vs. Cluff, supra,* the real point at issue was whether a provision of the constitution of Utah providing that "mortgages upon real and personal property shall be exempt from taxation" applied to an inheritance tax.

Concerning the New York cases holding that New York is without power to tax bonds of a domestic corporation owned by a non-resident and kept by him in the place of his residence, because of the tangible character of these bonds, it is only necessary to call this court's attention to the fact that New York relies as authority to support this position on *State Tax on Foreign-Held Bonds, supra.* The Blodgett case destroys that authority.

IX.

Other States Support Appellee's Position.

In *Chaffin vs. Johnson,* 200 Ia. 89, it was held that Iowa had jurisdiction to levy an inheritance tax on promissory notes owned by a non-resident, executed by residents of the state of Iowa, and secured by real estate in that jurisdiction. There the court, following *Blackstone vs. Miller,* decided that as Iowa protected the creditor in the enforcement of his obligation it had the right to tax the transfer of the debt.

The same principle is applied by the Supreme Court of the state of Michigan in *In re Rogers Estate,* 149 Mich. 305.

CONCLUSION.

The state of the domicil protects the debt, compels its payment, and permits its transfer. Every canon of logic and of justice supports the policy of that state to exact tribute from testator or beneficiary upon the transfer as a single succession. The principle should not be obscured by theoretical discussions of technical situs. To paraphrase the language in *Louisville, etc., Ry. Co. vs. Barber Asphalt Paving Co.*, 197 U. S. 430, 434, and *Wheeler vs. Sohmer, supra*, p. 439, it is important that the court "avoid extracting from the very general language of the Fourteenth Amendment a system of delusive exactness in order to destroy methods of taxation," and that it exercise "caution in cutting down the power of the states" on the strength of that amendment.

It is respectfully submitted that the judgment of the state court should be affirmed.

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SUPREME COURT OF THE UNITED STATES.

No. 26.—October Term, 1929.

The Farmers Loan and Trust Company, as Sole Surviving Executor of the Last Will and Testament of Henry R. Taylor, Deceased, Appellant,

vs.

The State of Minnesota.

Appeal from the Supreme Court of the State of Minnesota.

[January 6, 1930.]

Mr. Justice McReynolds delivered the opinion of the Court.

Henry R. Taylor, while domiciled and residing in New York, died testate, December 4, 1925. He had long owned and kept within that State negotiable bonds and certificates of indebtedness issued by the State of Minnesota and the Cities of Minneapolis and St. Paul, worth above $300,000. Some of these were registered, others were payable to bearer. None had any connection with business carried on by or for the decedent in Minnesota. All passed under his will which was probated in New York. There also his estate was administered and a tax exacted upon the testamentary transfer.

Minnesota assessed an inheritance tax upon the same transfer. Her Supreme Court approved this and upheld the validity of the authorizing statute. The executor—appellant—claims that so construed and applied that enactment conflicts with the Fourteenth Amendment.

When this cause first came before the Supreme Court of Minnesota it held negotiable public obligations were something more than mere evidences of debt and, like tangibles, taxable only at the place where found, regardless of the owner's domicile. It accordingly denied the power of that State to tax the testamentary transfer. After *Blodgett* v. *Silberman*, 277 U. S. 1, upon a rehearing, considering that cause along with *Blackstone* v. *Miller*, 188 U. S.

189, it felt obliged to treat the bonds and certificates like ordinary choses in action and to uphold the assessment.

Registration of certain of the bonds we regard as an immaterial circumstance. So did the court below. Counsel do not maintain otherwise.

Under *Blodgett* v. *Silberman* the obligations here involved were rightly regarded as if ordinary choses in action. The maxim *mobilia sequuntur personam* applied and gave them situs for taxation in New York—the owner's domicile. The testamentary transfer was properly taxed there. This is not controverted.

But it is said the obligations were debts of Minnesota and her corporations, subject to her control; that her laws gave them validity, protected them and provided means for enforcing payment. Accordingly, counsel argue that they had situs for taxation purposes in that State and maintain the validity of the challenged assessment.

Blackstone v. *Miller, supra,* and certain approving opinions, lend support to the doctrine that ordinarily choses in action are subject to taxation both at the debtor's domicile and at the domicile of the creditor; that two States may tax on different and more or less inconsistent principles the same testamentary transfer of such property without conflict with the Fourteenth Amendment. The inevitable tendency of that view is to disturb good relations among the states and produce the kind of discontent expected to subside after establishment of the Union. The Federalist, No. VII. The practical effect of it has been bad; perhaps two-thirds of the States have endeavored to avoid the evil by resort to reciprocal exemption laws. It has been stoutly assailed on principle. Having reconsidered the supporting arguments in the light of our more recent opinions, we are compelled to declare it untenable. *Blackstone* v. *Miller* no longer can be regarded as a correct exposition of existing law; and to prevent misunderstanding it is definitely overruled.

Four different views concerning the situs for taxation of negotiable public obligations have been advanced. One fixes this at the domicile of the owner; another at the debtor's domicile; a third at the place where the instruments are found—physically present; and the fourth within the jurisdiction where the owner has caused them to become integral parts of a localized business.

each State can adopt any one of these and tax accordingly, obviously, the same bonds may be declared present for taxation in two, or three, or four places at the same moment. Such a startling possibility suggests a wrong premise.

In this Court the presently approved doctrine is that no State may tax anything not within her jurisdiction without violating the Fourteenth Amendment. State Tax on Foreign Held Bonds, 15 Wall. 300; *Union Refrig. Transit Co.* v. *Kentucky*, 199 U. S. 194; *Safe Deposit & Trust Co.* v. *Virginia*, — U. S. — (November 25, 1929). Also no State can tax the testamentary transfer of property wholly beyond her power, *Rhode Island Trust Co.* v. *Doughton*, 270 U. S. 69, or impose death duties reckoned upon the value of tangibles permanently located outside her limits. *Frick* v. *Pennsylvania*, 268 U. S. 473. These principles became definitely settled subsequent to *Blackstone* v. *Miller* and are out of harmony with the reasoning advanced to support the conclusion there announced.

At this time it cannot be assumed that tangible chattels permanently located within another State may be treated as part of the universal succession and taken into account when estimating the succession tax laid at the decedent's domicile. *Frick* v. *Pennsylvania* is to the contrary.

Nor is it permissible broadly to say that nothwithstanding the Fourteenth Amendment two States have power to tax the same personalty on different and inconsistent principles or that a State always may tax according to the fiction that in successions after death *mobilia sequuntur personam* and domicile govern the whole. *Union Refrig. Transit Co.* v. *Kentucky, supra, Rhode Island Trust Co.* v. *Doughton, supra*, and *Safe Deposit & Trust Co.* v. *Virginia, supra*, and in opposition.

Southern Pacific Co. v. *Kentucky*, 222 U. S. 63, indicates plainly enough that the right of one state to tax may depend somewhat upon the power of another so to do. And *Coe* v. *Errol*, 116 U. S. 517, 524, though frequently cited to support the general affirmation that nothing in the Fourteenth Amendment prohibits double taxation does not go so far. It affirmed the rather obvious proposition that the mere fact of taxation of tangibles by one State is not enough to exclude the right of another to tax them.

"If the owner of personal property within a state resides in another state which taxes him for that property as part

> of his general estate attached to his person, this action of the latter state does not in the least affect the right of the state in which the property is situated to tax it also. . . . The fact therefore that the owners of the logs in question were taxed for their value in Maine as a part of their general stock in trade, if such fact were proved, could have no influence in the decision of the case and may be laid out of view."

If Maine undertook to tax logs permanently located in another State, she transcended her legitimate powers. *Union Refrig. Transit Co.* v. *Kentucky, supra.* Of course, such action could not affect New Hampshire's rights in respect of property localized within her limits.

While debts have no actual territorial situs we have ruled that a State may properly apply the rule *mobilia sequuntur personam* and treat them as localized at the creditor's domicile for taxation purposes. Tangibles with permanent situs therein, and their testamentary transfer, may be taxed only by the State where they are found. And, we think, the general reasons declared sufficient to inhibit taxation of them by two States apply under present circumstances with no less force to intangibles with taxable situs imposed by due application of the legal fiction. Primitive conditions have passed; business is now transacted on a national scale. A very large part of the country's wealth is invested in negotiable securities whose protection against discrimination, unjust and oppressive taxation, is matter of the greatest moment. Twenty-four years ago *Union Refrig. Transit Co.* v. *Kentucky, supra,* declared—"In view of the enormous increase of such property [tangible personalty] since the construction of railways and the growth of manufactures, the tendency has been in recent years to treat it as having a situs of its own for the purpose of taxation and correlatively to exempt it at the domicile of the owner." And, certainly, existing conditions no less imperatively demand protection of choses in action against multiplied taxation whether following misapplication of some legal fiction or conflicting theories concerning the sovereign's right to exact contributions. For many years the trend of decisions here has been in that direction.

Taxation is an intensely practical matter and laws in respect of it should be construed and applied with a view of avoiding, so far as possible, unjust and oppressive consequences. We

have determined that in general intangibles may be properly taxed at the domicile of their owner and we can find no sufficient reason for saying that they are not entitled to enjoy an immunity against taxation at more than one place similar to that accorded to tangibles. The difference between the two things, although obvious enough, seems insufficient to justify the harsh and oppressive discrimination against intangibles contended for on behalf of Minnesota.

Railroad Company v. *Pennsylvania*—"State Tax on Foreign Held Bonds Case"—15 Wall. 300, 320, distinctly held that the State was without power to tax the owner of bonds of a domestic railroad corporation made and payable outside her limits when issued to and held by citizens and residents of another State. Through Mr. Justice Field the Court there said—

> "But debts owing by corporations, like debts owing by individuals, are not property of the debtors in any sense; they are obligations of the debtors, and only possess value in the hands of the creditors. With them they are property, and in their hands they may be taxed. To call debts property of the debtors is simply to misuse terms. All the property there can be in the nature of things in debts of corporations, belongs to the creditors, to whom they are payable, and follows their domicile, wherever that may be. Their debts can have no locality separate from the parties to whom they are due. This principle might be stated in many different ways, and supported by citations from numerous adjudications, but no number of authorities, and no forms of expression could add anything to its obvious truth, which is recognized upon its simple statement."

If the situs of the bonds for taxation had been at the debtor's domicile—Pennsylvania—the challenged effort to tax could not have interfered unduly with the debtor's contract to pay interest.

New Orleans v. *Stempel*, 175 U. S. 309, *Bristol* v. *Washington County*, 177 U. S. 133, *Liverpool, etc. Ins. Co.* v. *Orleans Assessors*, 221 U. S. 346, recognize the principle that choses in action may acquire a situs for taxation other than at the domicile of their owner if they have become integral parts of some local business. The present record gives no occasion for us to inquire whether such securities can be taxed a second time at the owner's domicile.

The bonds and certificates of the decedent had acquired permanent situs for taxation in New York; their testamentary transfer was properly taxable there but not in Minnesota.

The judgment appealed from must be reversed. The cause will be remanded for further proceedings not inconsistent with this opinion.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 26.—October Term, 1929.

The Farmers Loan and Trust Company, as sole surviving executor of the last will and testament of Henry R. Taylor, deceased, Appellant,
vs.
The State of Minnesota.

Appeal from the Supreme Court of the State of Minnesota.

[January 6, 1930.]

Opinion of Mr. Justice Stone.

I concur in the result. Whether or not control over a debt at the domicile of the debtor gives jurisdiction to tax the debt, *Liverpool & London & Globe Insurance Co.* v. *Board of Assessors,* 221 U. S. 346, 354, we are not here concerned with a property tax, but with an excise or privilege tax imposed on the transfer of an intangible, see *Stebbins* v. *Riley,* 268 U. S. 137; *Saltonstall* v. *Saltonstall,* 276 U. S. 260, and to sustain a privilege tax the privilege must be enjoyed in the state imposing it. *Providence Savings Association* v. *Kentucky,* 239 U. S. 103. It is enough, I think, to uphold the present decision that the transfer was effected in New York by one domiciled there and is controlled by its law.

Even though the contract transferred was called into existence by the laws of Minnesota, its obligation cannot be constitutionally impaired or withdrawn from the protection which those laws gave it at its inception. See *Providence Savings Association* v. *Kentucky,* 239 U. S. 103, 113, 144; *Bedford* v. *Eastern Building & Loan Association,* 181 U. S. 227. And while the creditor may rely on Minnesota law to enforce the debt, that may be equally true of the law of any other state where the debtor or his property may be found. So far as the transfer, as distinguished from the contract itself, is concerned, it is New York law and not that of Minnesota which, by generally accepted rules, is applied there and receives recognition elsewhere. See *Bullen* v. *Wisconsin,* 240 U. S. 625, 631; *Russell* v. *Grigsby,* 168 Fed. 577; *Lee* v. *Abdy,* 17 Q. B. Div.

309; *Miller* v. *Campbell*, 140 N. Y. 457, 460; *Spencer* v. *Myers*, 150 N. Y. 269. Once the bonds had passed beyond the state and were acquired by an owner domiciled elsewhere, the law of Minnesota neither protected, nor could it withhold the power of transfer or prescribe its terms.

In the light of these considerations, granting that the continued existence of the contract rested in part on the law of Minnesota, the relation of that law to the transfer in New York, both in point of theory and in every practical aspect, appears to me to be too attenuated to constitute any reasonable basis for deeming the transfer to be within the taxing jurisdiction of Minnesota.

As the present is not a tax on the debt, but only on the transfer of it, neither the analogies drawn from the law of property taxes nor the attempt to solve the present problem by ascribing to a legal relationship unconnected with any physical thing, a fictitious *situs*, can, I think, carry us very far toward a solution. Nor does it seem that the invocation of the Fourteenth Amendment to relieve from the burdens of double taxation, as such, promises more.

Hitherto the fact that taxation is "double" has not been deemed to affect its constitutionality and there are, I think, too many situations in which a single economic interest may have such legal relationships with different taxing jurisdictions as to justify its taxation in both, to admit of our laying down any constitutional principle broadly prohibiting taxation merely because it is double, at least until that characterization is more precisely defined.

It seems to me to be unnecessary and undesirable to lay down any doctrine whose extent and content are so dubious. Whether it is far reaching enough to overturn those cases which, in circumstances differing somewhat from the present, have been regarded as permitting taxation in more than one state, reaching the same economic interest, is so uncertain as to suggest doubts as to its trustworthiness and utility as a principle of judicial decision. See *Wheeler* v. *Sohmer*, 233 U. S. 434, and *Blodgett* v. *Silberman*, 277 U. S. 1; *Scottish Union & National Ins. Co.* v. *Bowland*, 196 U. S. 611, 620; *Rogers* v. *Hennepin County*, 240 U. S. 184, 191; *New Orleans* v. *Stempel*, 175 U. S. 309; *Metropolitan Life Ins. Co.* v. *New Orleans*, 205 U. S. 395; *Bristol* v. *Washington County*,

177 U. S. 133; *Kirtland* v. *Hotchkiss*, 100 U. S. 491, and *Savings Society* v. *Multnomah County*, 169 U. S. 421; *Union Transit Company* v. *Kentucky*, 199 U. S. 194, 205; *Tappan* v. *Merchants National Bank*, 19 Wall. 490, 499; *Corry* v. *Baltimore*, 196 U. S. 466, and *Hawley* v. *Malden*, 232 U. S. 1, 12; *Blackstone* v. *Miller*, 188 U. S. 189 (so far as it relates to the transfer tax on a bank account in the state of the bank), and *Fidelity & Columbia Trust Co.* v. *Louisville*, 245 U. S. 54, 58; *Bullen* v. *Wisconsin*, 240 U. S. 625, 631.

SUPREME COURT OF THE UNITED STATES.

No. 26.—October Term, 1929.

The Farmers Loan and Trust Company, as sole surviving Executor of the Will of Henry H. Taylor, Appellant,
vs.
The State of Minnesota.

Appeal from the Supreme Court of the State of Minnesota.

[January 6, 1930.]

Mr. Justice Holmes.

This is a proceeding for the determination of a tax alleged to be due to the State of Minnesota but objected to by the appellant as contrary to the Fourteenth Amendment of the Constitution of the United States. The tax is imposed in respect of the transfer by will of bonds and certificates of indebtedness of the State of Minnesota and bonds of two cities of that State. The testator died domiciled in New York and the bonds were there at the time of his death. The Supreme Court of the State upheld the tax, — Minn. —; 222 N. W. Rep. 528, and the executor appeals.

It is not disputed that the transfer was taxable in New York, but there is no constitutional objection to the same transaction being taxed by two States, if the laws of both have to be invoked in order to give it effect. It may be assumed that the transfer considered by itself alone depends on the law of New York, but if the law of Minnesota is necessary to the existence of anything beyond a piece of paper to be transferred then Minnesota may demand payment for a privilege that could not exist without its help. It seems to me that the law of Minnesota is a present force necessary to the existence of the obligation, and that therefore, however contrary it may be to enlightened policy, the tax is good.

No one would doubt that the law of Minnesota was necessary to call the obligation into existence. Other States do not attempt to determine the legal consequences of acts done outside of their juris-

diction, and therefore whether certain acts done in Minnesota constitute a contract or not depends on the law of Minnesota alone. I think the same thing is true of the continuance of the obligation to the present time. It seems to me that it is the law of Minnesota alone that keeps the debt alive. Obviously at the beginning that law could have provided that the debt should be extinguished by the death of the creditor or by such other event as that law might point out. It gave the debt its duration. The continued operation of that law keeps the debt alive. Not to go too far into the field of speculation but confining the discussion to cities of the State and the State itself, the continued existence of the cities and the readiness of the State to keep its promises depend upon the will of the State. If there were no Constitution the State might abolish the debt by its fiat. The only effect of the Constitution is that the law that originally gave the bonds continuance remains in force unchanged. But it is still the law of that State and no other. When such obligations are enforced by suit in another State it is on the footing of recognition, not of creation. *Deutsche Bank Filiale Nurnberg* v. *Humphrey*, 272 U. S. 517, 519. Another State, if it is civilized, does not undertake to say to the debtor now that we have caught you we will force an obligation upon you whether you still are bound by the law of your own State or not. I believe this to be the vital point. Unless I am wrong the debt, wherever enforced, is enforced only because it is recognized as such by the law that created it and keeps it still a debt. No doubt sometimes obligations are enforced elsewhere when the statute of limitations has run at home. But such decisions when defencible stand on the ground that the limitation is only procedural and does not extinguish the duty. If the statute extinguishes the debt by lapse of time no foreign jurisdiction that intelligently understood its function would attempt to make the debtor pay.

I will not repeat what I said the other day in *Safe Deposit & Trust Co. of Baltimore* v. *Virginia*, November 25, 1929, concerning the attempt to draw conclusions from the supposed *situs* of a debt. The right to tax exists in this case because the party needs the help of Minnesota to acquire a right, and that State can demand a *quid pro quo* in return. *Southern Pacific Co.* v. *Kentucky*, 222 U. S. 63, 68. *Union Refrigerator Transit Co.* v. *Kentucky*, 199 U. S. 194, 206.

I do not dwell on the practical necessity of resorting to the State in order to secure payment of State or Municipal bonds. Even if the creditor had a complete and adequate remedy elsewhere, I still should think that a correct decision of the case must rest on whether I am right or not about the theoretical dependence of the continued existence of the bonds upon Minnesota law.

Blackstone v. *Miller*, 188 U. S. 189, supports my conclusions and I do not think that it should be overruled. A good deal has to be read into the Fourteenth Amendment to give it any bearing upon this case. The Amendment does not condemn everything that we may think undesirable on economic or social grounds.

Mr. Justice BRANDEIS agrees with this opinion.